

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1070

B
P/S

IN THE
United States Court of Appeals
For the Second Circuit

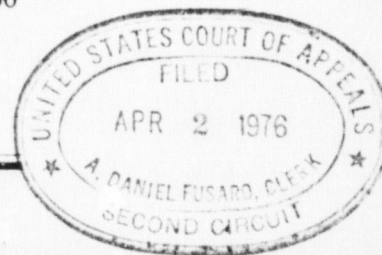
UNITED STATES OF AMERICA,
Appellee,
against
WILLIAM E. DOULIN,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of New York

APPENDIX
VOLUME I OF FIVE VOLUMES
(Pages 1a to 65a, 1 to 269)

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JUDGE WARD

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75 CRIM. 630

TITLE OF CASE

THE UNITED STATES

139.

WILLIAM E. DOULIN

ATTORNEYS

For U. S.:

Joseph Jaffe, AUSA.

791-0046

For Defendant:

Ms. La. Rosenbloom

100 Ave. S. Middletown N.Y.

714-343-4281

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
2 mailed	Clerk				
2 mailed	Marshal				
ation	Docket fee				
e 18					
1623					
e material statements.					
(First Counts)					

UNITED STATES COURT OF APPEALS
FILED
FEB 18 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

76-107

Filed Indictment.

75 Deft. present (Atty. present) Deft. pleads not guilty. Deft. to surrender Passport. Bail restrictions on further Southern Districts. Deft. ordered fingerprinted and photographed. Bail \$15,000 P.R.B. Case assigned to House Ward as a related case to 75 Cr. 6770.

the notice of appearance of Army units located in the vicinity of the

U.S.S.A. & A. present. 20 cases for maximum grant by means of 1971. to be
only 1 Motion for discovery & inspection. and pay plan is other than clients
Cashed.... .. Ward.

73. [redacted] D-10's affidavit & notice of motion for a bill of particulars, rec. 3-19-75.

75 United States, affidavit & notice of action to inspect grand jury minutes.
 207, 3-17-75.

1-75 1-22-75 Affidavit: notice of motion to dismiss the indictment, etc. 3-10-75.

PROCEEDINGS

- 5 Filed affidavit & ORDER permitting the deft. to Bound Brook & Somerville, New Jersey on August 9 & 10, 1975.....Ward, J.
- 7-75 Filed deft's. memorandum of law.
- 7-75 Filed Govt's. affidavit in opposition to deft's. motions to inspect Grand Jury minutes, to dismiss the indictment and for discovery and a bill of particulars.
- 7-75 Filed Govt's. memorandum of law in opposition to deft's. motions.
- 8-75 Filed transcript of record of proceedings dated 7-7-75.
- 8-75 Filed affidavit, Stip. & ORDER extending deft's. bail limits to include the Eastern District of N.Y., the Eastern District of Pennsylvania, and the States of New Jersey and Connecticut.....Ward, J.
- 8-75 Filed deft's. affidavit in response to Govt's. opposition to deft's. motions.
- 8-75 Filed deft's. reply memorandum.
- 8-75 Filed Govt's. affidavit for a writ of habeas corpus ad test. for Richard Monell, directed to Orange County Jail, Goshen, N.Y. Writ issued, ret. 10-20-75.
- 8-75 Deft's. motion to dismiss granted as to count 4. Trial set for 11-6-75 at 10:00 A.M.Ward, J.
- 8-75 Filed MEMO ENDORSED on deft's. motion to inspect Grand Jury minutes. Motion denied except as consented to by the Govt.....Ward, J. (mailed notice)
- 8-75 Filed MEMO ENDORSED on deft's. motion for a bill of particulars. Motion denied except as consented to by the Govt.....Ward, J.
- 8-75 Filed MEMO ENDORSED on deft's. motion to dismiss the indictment. Motion granted as to count 4 and denied as to the remainder.....Ward, J.
- 8-75 Filed Govt's. proposed examination of prospective jurors.
- 10-75 Filed writ of habeas corpus for Richard Monell directed to Orange County Sheriff's Office with marshal's return. Deft. released from custody upon posting bail as reported on 10-13-75.
- 10-75 Before Ward, J. jury trial begins.
- 10-75 Trial continues. Alternate juror #4 excused.
- 10-75 Trial continues.
- 10-75 Trial continues.
- 10-75 Trial continues.
- 10-75 Trial continues.
- 10-75 Trial continues. Jury deliberating. Verdict not guilty on counts 1 & 3. No verdict on counts 2, 5, 6, 7 & 8.
- 10-75 Jury deliberating. Verdict on remaining counts guilty on count 2; not guilty Count 5; guilty counts 6, 7 & 8. Bail of \$15,000 P.R.B. continued. Pre-sentence investigation ordered. Sentence date 1-6-76 at 2:15 P.M. Motions by 12-12-75; opposing papers by 12-26-75; reply by 1-2-76.....Ward, J.

B

WARD

3 a

75 Cr. 630

Page #3

PROCEEDINGS

- 75 Filed Govt's. requests to charge.
- 1-18-75 Filed Deft's. memorandum on admissability of Weissman confession.
- 1-21-75 Filed transcript of record of proceedings, dated 12-31-75 - NOV 6-10-11-75
- 1-24-75 Filed transcript of record of proceedings, dated NOV 12-13-14-15-1975
- 1-25-75 Filed Affidavit of Robert J. Jossen, I.U.B.I., in opposition to post-trial motions.
- 1-25-75 Filed Govt's Memorandum in opposition to Deft's post-trial motions.
- 1-29-75 Filed Govt's Pre-Sentence Memorandum.
- 1-23-76 Filed Judgment and Probation/Commitment Order- The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of TWO AND ONE-HALF (2½) YEARS on each of COUNTS 2,6,7, and 8, pursuant to T.18 U.S.C. Sec.3651, on condition that Deft be confined to a jail-type institution for a period of SIX (6) MONTHS. Execution of remainder of prison sentence is suspended. COUNTS 6,7, and 8 to run CONCURRENTLY with COUNT 2. The Deft is placed on probation for a period of TWO (2) YEARS to commence upon expiration of confinement. Deft is continued on \$15,000.00 unsecured P.R.B. pending appeal.....WARD,J.
- 11-28-76 Filed Deft's Memorandum of Law in support of Deft's motion to dismiss, etc.
- 11-28-76 Filed Deft's Post-Trial Reply Brief.
- 11-28-76 Filed Deft's Pre-Sentence Memorandum.
- 11-28-76 Filed Govt's Memorandum in support of admissions against Deft.
- 11-26-76 Filed Deft's Notice of Motions to dismiss a judgment of acquittal, suppressing all testimony of the Deft, setting aside the verdict, and as so further indicated.
- 11-26-76 Filed MEMO ENDORSEMENT on the above Deft's notice of motions filed same date. Motion DENIED in accordance with oral decision rendered this date. It is So Ordered.---ward,j. (n/n 1-27-76)
- 11-30-75 Filed Deft's Notice of Appeal to the U.S.C.A. 2nd Circuit, from the Judgment entered on 01-23-76 and from all intermediate orders. (n/n's)
- 11-30-76 Filed Deft's Notice of Appeal to the U.S.C.A. 2nd Circuit, from the Order entered on 01-26-76. (n/n's)

A TRUE COPY

LAYMON

RECHARD

Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

4 a

UNITED STATES OF AMERICA

Docket Number 75-CR-630

- against -

WILLIAM E. DOULIN

Hon. Robert J. Ward
(District Court Judge)

Defendant.

NOTICE OF APPEAL

Notice is hereby given that WILLIAM E. DOULIN appeals to
the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other
(specify) _____ entered in this action on January 23, 1976, and from all
intermediate orders. (Date)

MICHAEL M. PLATZMAN
(Counsel for Appellant)

Address

MARTIN ROSENBLUM
40 Grove Street
Middletown, New York 10940

Date January 29, 1976

To: United States Attorney
1 St. Andrew's Plaza
New York, New York

Phone Number 914-343-4281

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

☐ I am ordering a transcript
☒ I am not ordering a transcript
Reason:
☒ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

TRANSCRIPT ORDER

Prepare transcript of
☐ Pre-trial proceedings
☐ Trial
☐ Sentence
☐ Post-trial proceedings

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ☒ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

January 29, 1976

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

5 a

- against -

Docket Number 75-CR-630

WILLIAM E. DOULIN

Hon. Robert J. Ward

(District Court Judge)

Defendant.

NOTICE OF APPEAL

Notice is hereby given that WILLIAM E. DOULIN appeals to
the United States Court of Appeals for the Second Circuit from the ☐ Judgment ☒ order ☐ other
(specify) _____ entered in this action on January 26, 1976
(Date)

MICHAEL M. PLATZMAN
(Counsel for Appellant)

Date January 29, 1976

Address

MARTIN ROSENBLUM
40 Grove Street
Middletown, New York 10940

To: United States Attorney
1 St. Andrew's Plaza
New York, New York

Phone Number 914-343-4281

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

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☐ U.S. Attorney has placed order

☐ Other. Attach explanation

▶ **TRANSCRIPT ORDER**

▶ DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

Prepare transcript of

☐ Pre-trial proceedings

☐ Trial

☒ Sentence

☒ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 70(b)) ▶ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

January 29, 1976

▶ **COURT REPORTER ACKNOWLEDGEMENT**

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

6 a

-----x
UNITED STATES OF AMERICA :

-v- :

WILLIAM E. DOULIN, :

Defendant. :

INDICTMENT

75 Cr.

-----x
INTRODUCTION

The Grand Jury charges:

1. At all times relevant to this indictment WILLIAM E. DOULIN was the Chairman of the Orange County Republican Committee, Orange County, New York.

2. At all times relevant to this indictment Abraham J. Weissman was an Assistant District Attorney or the District Attorney of Orange County, New York.

3. On or about September 3, 1968 Richard Monell of High Falls, New York was indicted by the Orange County Grand Jury and charged in Indictment Number 88-68, People of the State of New York against Richard Monell with violations of New York State laws, that is, the crimes of assault in the first degree and assault in the second degree, in connection with an alleged assault he had committed upon George DeWeaver on or about April 21, 1968. On December 14, 1970 Richard Monell entered a plea of guilty in the County Court of the State of

New York, County of Orange to a charge of attempted assault in the second degree in satisfaction of those charges. On March 5, 1971 Richard Monell was sentenced. Counsel for the defendant and then Acting District Attorney Jerome Cohen were heard by the Court. Mr. Cohen made no recommendation as to sentence. Thereafter Monell was remanded to the custody of the New York State Department of Correction at the State Prison known as Sing Sing to serve an indefinite period of confinement not to exceed 2 1/2 years. On March 26, 1971 the defendant Richard Monell was resentenced in the Orange County Court. The sentence on March 5, 1971 was determined to have been illegally imposed. Assistant District Attorney Abraham J. Weissman appeared on behalf of the People of the State of New York. Mr. Weissman made the following statements, among others:

"Your Honor, the District Attorney's Office, since the prior sentence was imposed, has received a number of calls from responsible citizens from the County of Orange asking that leniency be extended to this defendant. . . . I feel, under the circumstances, perhaps this defendant should be given another opportunity, and if placed on Probation he would be his own judge and jury. . . ."

Thereafter the Court sentenced Richard Monell to probation and did not impose any period of confinement.

4. In or about June 1973, the
August 22, 1972 Additional Grand Jury, duly
impaneled and sworn in the United States District
Court for the Southern District of New York was
conducting an investigation into various alleged
violations of Federal Criminal statutes concerning
official corruption in Orange County, New York and
adjacent counties and was specifically investigating
any attempts to influence the enforcement of local
gambling laws, fraud on the local government and
obstruction of local law enforcement.

5. In or about February, 1975 the
January 1975 Additional Grand Jury duly impaneled
and sworn in the United States District Court for
the Southern District of New York, commenced an
inquiry to determine whether any violations of
federal law had occurred, including an investigation
into whether, among other things testimony deliberately
false had been given by witnesses before the August 22,
1972 Additional Grand Jury.

COUNTS ONE through THREE

The Grand Jury further charges:

1. On or about June 25, 1973, in the
Southern District of New York, WILLIAM E. DOULIN, the
defendant, having duly taken oath as a witness that
he would testify truthfully before the August 22,
1972 Additional Grand Jury, a Grand Jury of the

United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York and inquiring for that District, unlawfully, wilfully and knowingly and contrary to said oath, did make false material declarations, which he then and there well knew to be false, as hereinafter set forth.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation into possible violations of Federal Criminal statutes concerning official corruption in Orange County, New York and adjacent counties, including, but not limited to, those laws prohibiting: attempts to illegally influence or obstruct the enforcement of local gambling laws (Title 18, United States Code, Section 1511); any use of the mails in connection with any fraud on local government or any other person or entity (Title 18, United States Code, Section 1341);³ obstruction of local law enforcement and local government by improper influence of public officials (Title 18, United States Code, Section 1952); and conspiracy to defraud the United States and to violate the laws of the United States (Title 18, United States Code, Section 371).

3. It was material to said inquiry to determine whether the defendant WILLIAM E. DOULIN, had knowledge of and had participated with others in influencing and attempting to influence and

approaching and attempting to approach any public officials and any law enforcement officials in Orange County, New York with regard to any criminal investigations, indictments, pleas of guilty, sentences, resentences or dispositions of such matters. More specifically, it was material to ascertain (a) whether the defendant had met with any persons or had had any conversations with any persons in which the defendant, directly or indirectly, influenced or attempted to influence any public officials in Orange County, New York, (b) whether the defendant had discussed with or had any knowledge of any plan to influence the decision of any public or law enforcement official in Orange County, New York, (c) whether the defendant had in fact, directly or indirectly, asked, exacted, demanded, solicited, received, accepted or agreed to receive anything of value in return for his communicating with or attempting to influence any public or law enforcement official in Orange County, New York and (d) whether the defendant, by virtue of his position as Chairman of the Orange County Republican Committee, Orange County, New York had, in any way attempted to exert any influence on any public or law enforcement official in Orange County, New York.

4. At the time and place aforesaid the defendant WILLIAM E. DOULIN, appearing as a witness under oath before the said Grand Jury, did testify

falsely with respect to the aforesaid material matters and did make the following false material declarations:

COUNT ONE

Q Let me turn to an area that is of principal concern to us which has to do with the enforcement of the gambling laws in your county among other counties, and let me focus on what the ultimate question is insofar as our interest in speaking with you, sir. We are concerned to know whether any public officials in Orange County ever received any money or any other kind of valuable things in return for playing any part in attempting to influence the local law enforcement in that county.

Do you understand that?

A I understand the question.

Q And my question I want to ask doesn't really go so much to hearsay although we would be interested in any such hearsay and it's appropriate before a Grand Jury. Let me put this question to you: Have you personally, sir, ever in any way been involved in any conversation or discussion with anyone on the subject of you personally in any way receiving anything of value to help influence law enforcement and particularly gambling law enforcement in your county?

A Never.

COUNT TWO

Q I guess what I had asked you was and you started to answer, I asked you if there ever

came a time when anyone had approached you to ask you to exert some influence or had offered you any money to try to exert influence in connection with the gambling laws.

A Nobody offered me money. I know that years ago, many people who were not in gambling at all now, asked me to see the--would I go see a judge or go see the District Attorney. But I never agreed to do it. Never spoke to any judge or District Attorneys in anybody's behalf. Now being in the undertaking business--

Q That means gambling or anything else.

A Gambling or anything else as far as that goes. Being in the undertaking business, people call me and ask me to help them. Like for instance, I have many calls on speeding tickets. Will I see a judge for that. Something like that. I have calls people say "my brother got arrested for drunk driving." I might tell them that I will see what I can do for them. But I have always set a rule. I don't see anybody, but I tell them that I might. That I'll see what I can do for them.

Now, this answers two purposes. After all, I'm in business. I may have buried in the family. I don't want to lose the family and don't want to create any hard feelings. At least I tell them I'll make an effort to see what I can do. But I've never yet approached a DA, an assistant or any judge for anyone.

Q For any purpose?

13 a

A For anything.

COUNT THREE

Q Mr. Doulin, has anyone ever at any time offered you any money or anything of value and you say that in its broad sense, to try to influence your conduct in any way whatsoever on anything, now that's a broad question and I don't mean to be unfair by it.

A I'll answer it. And I give you the privilege of looking up all bank accounts that you want to on my behalf that I have. The only thing that I ever had given to me was quite publicly. Malcolm Wilson, the Lieutenant Governor was a toastmaster at a testimonial dinner given for me two years ago. 750 people attended. They had to stop selling tickets three months before the affair was held. They gave me a testimonial dinner and presented me with a 1972 Cadillac. That was done publicly. That's the only thing of value that I ever received and that was done by my friends throughout both counties.

* * * *

Now, that's the only thing of value that I ever received in my life.

* * * *

Q Has anyone ever offered you anything of value or money or anything else?

A No.

Q Regardless of whether it was given with the exception of this testimonial you have told us about.

A No.

(Title 18, United States Code, Section 1623.)

COUNTS FOUR through EIGHT

The Grand Jury further charges:

1. On or about February 12, 1975 in the Southern District of New York, WILLIAM E. DOULIN, the defendant, having duly taken an oath as a witness that he would testify truthfully before the January 1975 Additional Grand Jury, a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York and inquiring for that District, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations, which he then and there well knew to be false, as hereinafter set forth.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation into possible violations of United States laws relating to allegations of official corruption and any illegal acts performed by public officials and people in quasi-public positions, in Orange County, New York, including, but not limited to, those laws prohibiting: evasion of Federal income taxes (Title 26, United States Code, Section 7201); attempts to influence or

obstruct the criminal justice system (Title 18, 15 a
United States Code, Sections 201(d), 1503, 1510, 1511,
1952); any use of the mails or wires in connection
with any fraud (Title 18, United States Code,
Sections 1341, 1343); obstruction of justice (Title 18,
United States Code, Section 1503); obstruction of
criminal investigations (Title 18, United States Code,
Section 1510); obstruction of local law enforcement
(Title 18, United States Code, Section 1511); interstate
travel and the use of interstate facilities including
the mail with intent to violate federal or state
bribery or extortion laws (Title 18, United States
Code, Section 1352); giving false statements to any
federal officer in a matter within the jurisdiction
of any federal agency (Title 18, United States Code,
Section 1001); making false material declarations
before any Federal Grand Jury (Title 18, United States
Code, Section 1623); and conspiracy to defraud the
United States and to violate the laws of the United
States (Title 18, United States Code, Section 371).

3. It was material to said inquiry
to determine whether the defendant WILLIAM E. DOULIN,
had knowledge of and had participated with others in
influencing and attempting to influence and approaching
and attempting to approach any public officials and
any local law enforcement officials in Orange County,
New York with regard to any criminal investigations,
indictments, pleas of guilty, sentences, resentences

or dispositions of such matters. More specifically, it was material to ascertain (a) whether the defendant had met with any persons or had had any conversations with any persons in which the defendant, directly or indirectly, influenced or attempted to influence any public or law enforcement officials in Orange County, New York, (b) whether the defendant had discussed with or had any knowledge of any plan to influence the decision of any public or law enforcement official in Orange County, New York, (c) whether the defendant had, directly or indirectly, asked, exacted, demanded, solicited, received, accepted or agreed to receive anything of value in return for his communicating with or attempting to influence any public or law enforcement official in Orange County, New York, (d) whether the defendant, by virtue of his position as Chairman of the Orange County Republican Committee, Orange County, New York had, in any way attempted to exert any influence on any public or law enforcement official in Orange County, New York, (e) whether the defendant, WILLIAM E. DOULIN, had met with or had had any conversations with any public or law enforcement officials in the Orange County District Attorney's Office, including then Assistant District Attorney Abraham J. Weissman, concerning the resentencing of a state criminal defendant Richard Monell identified in paragraph 3. of the introduction to this indictment and (f) whether the defendant had met with or had had any

conversations with any persons, including Monell's grandmother, Jean Grant, concerning the sentencing and resentencing of state criminal defendant Richard Monell.

17 a

4. At the time and place aforesaid the defendant WILLIAM E. DOULIN, appearing as a witness under oath before the said Grand Jury, did testify falsely with respect to the aforesaid material matters and did make the following false material declarations:

COUNT FOUR

Q Mr. Doulin, we have marked Grand Jury Exhibit 1, today's date.

A Yes.

Q This is a photocopy of your Grand Jury testimony dated June 25, 1973. I would like you to take a few minutes and read through that.

(Witness reading.)

Q Mr. Doulin, if you would like --

A No. I have read through enough.

O We can continue to let you read this outside the Grand Jury room and give the Grand Jurors a brief recess. I do want you to read through the testimony. Would you like to take a brief recess and you can continue reading outside?

A All right.

(Witness leaves room with Grand Jury Exhibit 1.)

(Recess.)

(Witness William E. Doulin Returns to room)

Q Mr. Doulin, will you, please, be seated again.

A Yes.

Q Mr. Doulin, I want to remind you that you are still under oath?

A Yes.

Q We have taken a break now for approximately a half hour - actually it was a little more than a half hour and during that time you read this Grand Jury Exhibit One; is that correct, you read through each page?

A Yes, I scanned it.

Q You took over a half hour, you read it pretty carefully, haven't you?

A I read it, yes.

Q I put it before you again. Do you have any questions about that testimony and by that I mean is there anything in that testimony that you would want to change?

A No.

Q Are you satisfied that the testimony as recorded in this exhibit is your accurate testimony?

A Yes.

Q Are you satisfied that the testimony you gave and as recorded in Grand Jury Exhibit One is truthful testimony?

A Yes.

Q And that it is testimony upon which this Grand Jury can rely?

A Yes.

19 a

Q I ask are there any changes, additions or amendments that you want to make?

A No.

Q In Grand Jury Exhibit One, your prior testimony, you were asked some questions about whether people ever came to you to ask you to approach law enforcement officials, or D A's or judges, in connection with pending criminal cases; do you recall that?

A Yes.

Q You said in that testimony that on occasions people would approach you but that you never followed through and that you never approached anyone in law enforcement on behalf of a defendant;- -

A That is right.

Q - - is that correct?

A Yes.

Q And you stand by that testimony?

A Yes.

COUNT FIVE

Q You are talking about traffic tickets?

A Yes, traffic tickets it would be.

Q Has anyone ever come to you asking you to do a favor for them in any other kind of criminal case?

A No.

Q Never?

A Not that I know of.

Q When you say, "Not that I know of,"
you mean never?

A Never, yes; never.

Q Has anyone, at anytime, come to you
and offered you money if you would see someone in
law enforcement, from a judge all the way through to
a policeman - -

A No.

Q Let me finish the question. - -
offer you money to see someone in law enforcement to
try to influence a case or investigation, have you
ever been offered money to do that?

A No.

Q Never in your entire career?

A No.

Q Have you ever solicited from anyone
money in order for you to see someone in law enforce-
ment to influence a case or investigation?

A No.

Q Have you ever had any discussions
with anyone concerning people offering you money or
anything of value for you to see someone in law
enforcement to influence a case or an investigation?

A No.

Q You understand when I say money in my
prior questions I include anything of value - -

A Yes.

Q - - offered to you?

A I understand.

Q Has anyone offered you or have you ever solicited anything of value to be payed indirectly, for example, to the Republican Party, rather than directly to you - -

A No.

Q - - in exchange for you seeing someone in law enforcement and attempting to influence a case or an investigation?

A Never.

Q Nothing like that has ever happened?

A No.

Q No one has ever asked you to do that?

A No.

Q You have never solicited anyone along those lines?

A No.

COUNT SIX

Q Have you directly and personally or indirectly, through someone else, interceded in any case in the criminal justice system in an attempt to influence the outcome of the case or investigation or the trial or whatever the pending - -

A Never.

Q You are absolutely certain about that?

A Yes.

Q Did you ever try to use your influence in any way to affect the outcome of a criminal justice investigation or proceeding?

A Never.

Q Did Mrs. Grant at any time ever have a discussion with you in which you agreed to intercede on behalf of her son, Richard Monell, in connection with a criminal case that was pending against him?

A No.

Q Never had such a discussion?

A No.

* * * *

Q Did you ever have conversations with anyone, whether it be Mrs. Grant or another member of the family or anyone else, in which they asked you to intercede in Richard Monell's criminal case and to use your influence to assist Richard Monell?

A No.

Q Did you ever offer or volunteer to intercede on Mr. Monell's behalf in his criminal case?

A No.

COUNT EIGHT

Q Did you ever have a discussion with anyone in which you discussed interceding in Richard Monell's criminal case in order to assist Richard Monell and to use your influence to help him?

A No.

(Title 18, United States Code, Section 1623.)

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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 ----- x

5 UNITED STATES OF AMERICA, :

6 v. :

75 Cr. 630

7 WILLIAM E. DOULIN, :

8 Defendant. :

9 ----- x

10 Before:

11 HON. ROBERT J. WARD,

12 District Judge

13 New York, October 31, 1975
14 Room 1106 - 2:30 p.m.

15 APPEARANCES

16 PAUL J. CURRAN, Esq.,
17 United States Attorney for the
18 Southern District of New York

19 By: Bart M. Schwartz, Esq.,
20 Robert J. Jassen, Esq.,
21 Assistant United States Attorneys

22 MARTIN ROSENBLUM, ESQ.
23 Attorney for Defendant
24 Michael M. Platzman, Esq., of Counsel

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2 THE CLERK: United States of America v.
3 William E. Doulin.

4 MR. SCHWARTZ: Ready for the government.

5 MR. PLATZMAN: Ready for the defendant.

6 THE COURT: Good afternoon, gentlemen.

7 MR. PLATZMAN: May it please the Court, the defend-
8 ant here has made three motions.

9 The first two concern themselves essentially
10 with the question of disclosure. The third concerns itself
11 with an application to dismiss the indictment or several
12 of the counts which we say are repetitious and concern
13 themselves with exactly the same issue and in one instance we
14 say one of the counts doesn't concern itself with any issue and
15 we feel totally on the indictment the purpose of this --
16 questioning of this defendant was essentially to entrap
17 the defendant into a perjury count and something perhaps
18 very similar and along the line of Judge Lehv's decision
19 just appeared this past week involved a dismissal of an
20 indictment and we are almost on all fours with that case.
21 I would like to get back before we get to the question
22 of the validity of these counts would be the question
23 of disclosure.

24 Your Honor may recall that this case involved
25 one in which the defendant is charged initially with

2 the first three counts of having lied before a 1972 grand
3 jury and these three counts are prefaced by introductory
4 remarks or statements which describe the circumstances under
5 which the defendant was interrogated before the grand jury.

6 They concern themselves with a case that was
7 heard in the Supreme Court or the County Court in Orange
8 County concerning a Mr. Monell.

9 Your Honor may remember the circumstances of
10 that. I won't go into any great -- because I know your
11 Honor has considerable familiarity with the issues in
12 this case.

13 Essentially the defendant was asked questions
14 before that grand jury whether he ever received any money
15 or whether he ever approached anybody to give them money,
16 whether he got money for himself that he turned over to
17 someone else. Whether he attempted in any way to influence
18 or corrupt the justice system in Orange County for the purpose
19 of alleviating the sentence that was to be imposed upon
20 Monell and his answers to all of this was essentially
21 no.

22 We urge that almost on the face thereof this
23 concerns itself with events that took place presumably
24 in violation of state laws, Monell committed a crime under
25 the state statute. I think he was indicted for assault.

2 He pleaded guilty and a sentence had been imposed, appar-
3 ently was erroneous.

4 He was brought back for a new sentence and in
5 between the two sentences the claim is made that this
6 defendant attempted to corrupt the D.A. by asking him to
7 intervene and the result was a probation for the defendant
8 Monall.

9 The indictment refers to testimony which was given
10 by this defendant, Mr. Doulin and says that the following
11 was perjurious and this is done in the first three counts.
12 It is extremely vague, it doesn't identify what was
13 perjurious, what was the truth. It doesn't indicate if it
14 is claimed that the defendant's statement, for example
15 was perjurious in that he did approach someone, when did
16 this take place, whom did he approach?

17 The defendant should not be placed in a position
18 where he has to prove the negative of something. He
19 can't. He has to be apprised of all of the facts upon
20 which he can properly defend his case.

21 As I am sure your Honor perhaps has followed some
22 of the trend of the recent decisions which indicate a
23 high level of liberality. Just the other day in the Law
24 Journal and I think I sent your Honor a letter supplementing
25 a memorandum concerning the Cannone case which was

1 affirmed by the Appeals Court of this circuit in which they
2 indicate the tendency now is toward liberality, that the
3 defendant must be apprised, there must be a full disclosure.

4 What is the government claiming? So that the
5 defendant is not placed in a position where he can
6 claim either surprise upon the trial or be forced to wait
7 until the government puts in its case and then say, well, I
8 never knew you were going to tell me that Johnny Jones was
9 the man that I approached. Now I will have to go and
10 find someone to contradict Johnny Jones. He will want
11 either a postponement or some other ill effects.
12 takes place which as my brief indicated might form the
13 basis for a claim of double jeopardy.
14

15 There is no reason why the government should not
16 be compelled to disclose all of the facts upon which it is
17 going to base its case.

18 The Cannone case as an example just decided
19 by the Circuit Court indicated that the defendant is entitled
20 to the names and addresses of the witnesses that the government
21 is going to produce. They must identify them and their
22 addresses.

23 I say in this kind of a case, a case involving
24 perjury, the necessity for such disclosure far exceeds
25 the necessity that might exist in any other case, for

the obvious reason, as I may attempt to illustrate.

In a case for instance where a man is accused of shooting someone or a hold-up on 8th Avenue and 42nd Street or something to that effect, and that appears in the indictment on a certain date, that man knows really what he has to generally cope with. Great disclosure is not really necessary.

But if you ask a man, did you ever approach anybody on any date in any amount, for any purpose and try to corrupt him and offer them money, this is not the kind of disclosure in an indictment which the defendant can say I know what I will have to meet.

He doesn't know any fact which the government is going to attempt to prove on the trial. I say the request that we have made and we have outlined a whole series of requests for disclosure, one, of the grand jury minutes that concern themselves with such testimony, two, what witnesses are they going to rely upon, their names and addresses, three, what will be claimed was in fact the truth to which fact it is claimed by the government this defendant lied.

If they say in their count that he lied when he denied having approached anyone at any time to offer them money, let the government say you lied. You approached Johnny Jones on January 3rd and offered him \$8 or a

\$3 bill or whatever it might be.

Then we can say we couldn't have approached Johnny Jones because we never knew Johnny Jones or we were not in the country at that time or there is no such thing as a \$3 bill and we therefore didn't offer it to him. We have means of controverting these allegations. We have no means based upon this indictment of doing that.

Now, I don't want to burden your Honor with every single demand that we have made, both on our motions for disclosure with respect to the grand jury minutes nor with respect to the rather voluminous demand that we have made in the demand for the bill of particulars which I have attached as an exhibit to my affidavit in the motion for a bill of particulars.

Now, perhaps every single item set forth in that demand may not be essential but if we can get enough to show really what the government intends to prove this is all that we are interested in and we feel constitutes the defendant's rights in the judicial process of attempting to defend himself.

Now, we have also asked for Brady disclosure. Presumably that's been consented to but as yet we have not received anything to indicate that such a disclosure will be made or if there is nothing as they may take the position,

2 then at least we should be advised that there is nothing.
3 We would like something along those lines. Counsel for
4 the government has been very kind to indicate that they are
5 giving us some data concerning some tape recordings.

6 They indicated that they are being in the process
7 of being duplicated, I believe. I think counsel is handing
8 me some cassettes and I suppose that is it.

9 MR. SCHWARTZ: That is.

10 MR. PLATZMAN: In addition there were some other
11 exhibits which Mr. Schwartz said he would give me at our
12 last meeting about a week or ten days ago. I assume we
13 are going to get these. They concern themselves with the
14 D.A.'s file. Plus, I think, I think counsel indicated they
15 wanted to give us extracts from newspaper clippings.
16 I don't know whether all of these things or any part of
17 them will establish the perjurious statements of this de-
18 fendant. If they are, we will gratefully accept them and
19 like to see the relationship.

20 We would like counsel for the government to specify
21 exactly what these perjurious statements constitute.

22 If your Honor would care to go through the
23 laborious effort for every single claim that we are making,
24 I am trying to hit this broadside as to the general prin-
25 ciples and to indicate in the indictment we really don't

1 know what we have to defend in this case and we wouldn't know
2 until the trial commenced and at that time we wouldn't
3 under those circumstances have to say we need more time
4 to try to generate the proof, the proof that may have to
5 come from many different places and it might take time.
6 We see no reason why that shouldn't be disclosed at the present
7 time, particularly in the light of the very recent decision
8 of the Cannone case.
9

10 I would like to refer very briefly to the question
11 concerning the validity of this indictment and the various
12 counts. The first count concerns itself with the claim
13 after reciting the circumstances surrounding the Monell
14 case in Orange County, that the '72 grand jury was investi-
15 gating and this was as explained by the United States
16 Attorney when he questioned Mr. Doulin was investigating
17 gambling in that county and then asked him whether or not
18 he had approached anyone, any government official or
19 prosecuting official in order to corrupt the determination
20 in the Monell case and his answer was no.

21 The jurisdiction of the grand jury in the federal
22 court is only as broad as the jurisdiction of the court
23 itself. Any investigation with respect to that case is
24 a state problem. It really does not belong in the federal
25 courts.

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2 However, even assuming it does, there still has to
3 be a question of materiality to the investigation being conducted
4 at that time. It appears to me that this type of question-
5 ing that took place at that time, unless there is something
6 to show that this investigation didn't really concern itself
7 with gambling laws in Orange County and that was the reason
8 for asking him about the Monell case and I don't see
9 the slightest relationship between the two, there is no
10 jurisdiction.

11 Assuming though that Count No. 1 and I go to the
12 next point that I am making, is valid, then I say there is
13 nothing else in the entire indictment, Counts 2 to 8
14 inclusive, there is anything more than a repetition of
15 Count 1. Count 1 concerns itself as to whether or not
16 Doulin had a conversation with anyone about getting money.

17 Count 2 concerns itself with whether anyone
18 approached Doulin about getting money. I say the same
19 thing. Before I can have a conversation with Mr. Schwartz,
20 I have to walk up to him and approach him. I say this is
21 all part of one act and to separate this into two separate
22 counts, seems to be meaningless.

23 Count No. 3 concerns itself with whether or not
24 anyone offered Mr. Doulin money. This is all still part
25 of the same thing, except that the United States Attorney

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2 has done, has taken one act or one thing complained about
3 as not having been testified to truthfully and split it
4 up into steps and by doing so, now makes each split-off
5 another count.

6 Now I say that is invalid. The whole question
7 in making a count, is there a crime? Has there been
8 a second crime committed when after I have approached
9 Mr. Schwartz I then had a conversation with him. That
10 doesn't make it two crimes. It is all one act and the
11 same thing with the question of offering.

12 Now Count 4 goes even more into the unknown as to
13 how the United States Attorney arrives at the conclusion
14 that this constitutes a crime. Count No. 4 is a count
15 in which it is alleged that Mr. Doulin lied when the following
16 took place at the grand jury of 1975.

17 The first three counts concern themselves with
18 his testimony before the grand jury of 1972. Now
19 Mr. Doulin is called in in 1975 before another grand jury
20 and he is handed the minutes of the hearing held before
21 the grand jury in 1972. He is asked by the United States
22 Attorney, please read them. And so he looks at them and
23 he says okay. Being a very careful United States Attorney,
24 he says to him, read them carefully. I tell you we will call
25 a recess and you go out and really read them. There was

a recess and then he was called back and asked again, "Did you read the minutes of the last grand jury hearing?"

He said, "Yes, I read it. I looked at it."

"Is that what you testified to?"

He said, "Yes."

That's perjury.

Now it is not perjury. He said he testified to it. But how one can build perjury upon another perjury by merely asking him "Is that what you testified to before, is that correct or incorrect?". To make that another crime seems unbelievable.

That could almost go on ad infinitum. I would say if this is true then counsel certainly would have been justified to ask him a half hour later, "Did you a half hour ago, testify the following," which is just what he testified to. Then if Mr. Doulin says yes, it is another crime. I doubt it. I don't think having testified presumably falsely, if what counsel is urging in the first grand jury hearing in 1972, that now the same witness can now be asked, did you testify falsely or not falsely, it doesn't make any difference and he says yes, that doesn't make it a crime. Even if he repeats and says yes, it was true, it is still the same crime. The fact that it may have been extended or split up over a period of time does not create

another crime.

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Now, what I have said with respect to Counts 2 and 3 apply equally as well with respect to the remaining counts of 5, 6, 7 and 8, which all concern themselves with this one situation and except it is couched in different language and constitutes a variation on a theme.

This may be very good in music but I doubt whether it is justified in the law, in that having once set forth the crime, to ask the same thing over again in other language or to split it up in steps as to I walked from the distance or I approached and then I spoke with him and then I offered him. Making each one of these acts a separate crime violates the spirit of what is supposed to be contained in an indictment.

We also ask one further thing with respect to this, before I'd like to discuss for a few moments the Judge Lehv decision, is that we would like the opportunity with respect to any of those counts that your Honor feels survives this present attack to renew this following full disclosure. Because obviously it is not until there is full disclosure with respect to every element of the crime charged, including what took place as well as the materiality which facts we may also have to meet upon the trial.

Once that is disclosed, we would then be in a better

position to summarize our position with respect to the validity of each of the counts as well as to the validity of the indictment as a whole. I would like to, but briefly, make reference, I hope your Honor had the opportunity of at least seeing the report in the newspapers concerning this morning in a case which Judge Lehv decided. After readings its report, I cannot help but conclude that it is almost on all fours with the spirit and events that occurred in this case. And on that case, there too, the defendant was charged with perjury.

Judge Lehv urged in his opinion that the whole -- that the entire situation in that case was such as to indicate that the United States Attorney and the grand jury was not really looking to investigate. They were not really looking to unearth anything. Because if they had, their questioning would have been different.

Instead they brought this man in and they set him up in asking him questions presumably to which they knew or believed that he was lying, and then let it drop. Instead of asking him whether they got an answer which was negative, let us say, confronting him with what they did have, and say "Isn't it a fact that you did this" and that would have been a true investigation.

Judge Lehv held that therefore, there is, the

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2 indictment itself, is invalid because to hold a man for per-
3 jury before a grand jury is to require one to establish
4 that this was essential in part and material to the
5 investigation of the grand jury. But if there was really
6 no investigation, if they really didn't need his answers
7 as to what he was saying, and if that was the purpose and
8 the questioning pointed to it, they didn't have to go to
9 extrinsic proof to establish this.

10 We urge in this case this is exactly what hap-
11 pened. Reading the transcript of this man's testimony
12 which was furnished us, the testimony before the grand
13 juries, we can only conclude there was no attempt to
14 follow through on one single question. In every instance
15 once they got the answer, yes or no, then that was
16 dropped. This was not a genuine investigation.

17 We urge that the reasoning, with regard to
18 the very sound and learned decision of Mr. Justice Lehv ap-
19 plies in the present case, is exactly what they did
20 in Judge Lehv's decision.

21 We urge that a full reading of the total testimony
22 of Mr. Doulin before the two grand juries indicates exactly
23 the same thing. Once they got an answer, they never
24 confronted him with a single fact to really investigate,
25 indicating that the grand jury was really investigating.

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2 That's the purpose of the grand jury and if a man lies under
3 those circumstances when the grand jury is attempting to
4 accomplish this then he is guilty of perjury.

5 If the grand jury is not in the process of doing
6 this, he is guilty of nothing.

7 THE COURT: Thank you, Mr. Platzman.

8 Mr. Schwartz?

9 MR. SCHWARTZ: May it please the Court, let me,
10 if I may, turn to the last argument by Mr. Platzman, although
11 that wasn't raised in the earlier papers, I did read the
12 article in the Times. I haven't read the opinion that
13 Mr. Justice Lehv wrote in that case, although I would say
14 that the situation we have in our case is very different
15 from what Mr. Platzman has described it to be. In fact,
16 an examination of the transcripts before the two grand
17 juries, each appearance by Mr. Doulin, clearly show that after
18 being questioned generally at the first grand jury and
19 after being questioned specifically at the first grand jury
20 concerning gambling and law enforcement or any other law
21 enforcement, Mr. Doulin was brought back before the second
22 grand jury to be specifically confronted with the Monell
23 case and in fact in the indictment, one of the counts
24 refers specifically to Mrs. Grant, who is the grandmother
25 of Monell and asked whether Mr. Doulin had any conversations

1 with Mrs. Grant and I think if your Honor examines the
2 preamble in the second appearance, it is entirely clear
3 what the grand jury was investigating in and what the grand
4 jury was interested in. He was in no way surprised by
5 the questions or in any way confused by the questions put
6 to him. He knew exactly what they meant and he knew
7 exactly what the grand jury was trying to find out. That
8 is, whether anyone, including Mr. Doulin, had been influencing
9 the local law enforcement -- Title 18, Section 1511, makes
10 it a federal crime, to influence law enforcement in con-
11 nection with gambling enterprises. That was part of
12 the grand jury's function and part of the grand jury's
13 investigation. Mr. Doulin was so advised. As part of
14 that, the grand jury was entitled to determine, to find
15 out if anyone was influencing the D.A. or other people in the
16 D.A.'s office or in the Police Department.

18 I think it is very clear that an incident where
19 Mr. Doulin interceded behind the scenes to get a probation
20 sentence for a defendant in a serious criminal case is cer-
21 tainly the length the grand jury would want to investigate
22 and certainly a piece of evidence the grand jury would be
23 interested in hearing, so it could determine whether there
24 had been any other efforts to influence law enforcement.

25 In addition to this and this is all more fully

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2 set forth in the papers Once there was perjury at the
3 first grand jury, the second grand jury was trying to
4 determine what the perjury was, exactly what the limits
5 were giving Mr. Doulin an opportunity to tell the grand
6 jury the truth if he was so inclined.

7 Again I point to the specific questioning
8 and the specific warnings to him in the grand jury, and
9 the ample time he had to review his testimony at the first
10 grand jury.

11 THE COURT: What about that fourth count?

12 MR. SCHWARTZ: Well, your Honor, if I may--

13 THE COURT: That does seem troublesome from this
14 Court's point of view.

15 MR. SCHWARTZ: Let me go first to the fourth
16 count which is the one that is most interesting to you.
17 That count of the indictment asks whether Mr. Doulin himself
18 ever approached anyone to assist a defendant: In other
19 words, he was shown his prior grand jury testimony and he did
20 adopt it again at this grand jury appearance. But the
21 questioning going on to page 14 of the indictment, asks
22 whether he had personally approached people in law enforcement
23 on behalf of an indictment and that is not in any -- excuse
24 me, in behalf of a defendant and that is not in any of the
25 counts of the indictment. Each count will require

2 different proof at the trial.

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3 For that reason each count should stand alone
4 and certainly should await the proof at trial.

5 THE COURT: Count 4, direct my attention.

6 MR. SCHWARTZ: Page 14.

7 THE COURT: Direct my attention to the Q and A
8 that you make reference.

9 MR. SCHWARTZ: The third question, your Honor.

10 THE COURT: What you have done there, as I read
11 it, is summarize prior testimony and ask him in essence,
12 is your prior testimony correct and do you stand by it?
13 Isn't it sufficient in charging this defendant that you
14 prove that his prior testimony was not correct, that it
15 constituted perjury and in the event he indicates at some
16 point he disaffirmed the testimony, you could utilize this
17 testimony to impeach him. Is this affirmance? Or if he
18 should say that was quite an accident and if I had the
19 opportunity, I could have corrected the situation and you
20 would then produce this testimony to impeach him. It does
21 seem to me that it would suffice if I let you have Counts 1,
22 2 and 3 and dismissed Count 4 which I find to be really a
23 summary, in essence, a ratification of Counts 1, 2 and 3
24 and to a considerable extent, duplicative of those counts.
25 I just don't see the new matter, other than the fact that you

asked him to ratify his prior testimony that is presented in Count 4. I frankly consider it to be a summary of prior testimony.

MR. SCHWARTZ: Your Honor, the reason I say it is new mater, is that the testimony which was summarized in Count 4 was not included in either of Counts 1, 2 or 3 in Mr. Doulin's prior appearance before the grand jury.

What he is being asked in Count 4 is a restatement of prior testimony but not prior testimony that is included in this indictment. For that reason, I'd say it is a separate count of perjury.

Now, I agree with your Honor, that an alternative could have been to include it to the counts relating to his first appearance in the grand jury, but I think also this is a proper alternative, to ask him again whether this testimony he stands by and be specific as to the testimony and then concluding it in Count 4.

THE COURT: Well, I must suggest that I am troubled by Count 4. You may proceed.

MR. SCHWARTZ: Thank you. I think that it is unfair too, for Mr. Platzman to approach this as if he is being kept completely in the dark concerning the charges in the indictment.

THE COURT: Oh, that's argument now. I recollect

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2 your giving what I think is a great deal of discovery.

3 I don't really think you need dwell long on the fact that his

4 client was a man who was being led along and was docilely

5 following. He's been told a good deal in the discovery.

6 More I think than possibly you should or would be strictly

7 required to give. I don't find any lack of notice on the

8 defendant's part here, based on the discovery presented

9 of the charges which are lodged against him.

10 It seems to the Court quite clear what you are

11 driving at. It is this Monell case and his alleged con-

12 nection with it, any connection with it. Talking to

13 Mr. Weissman, among other things. I don't see anything

14 there relative to he doesn't know the nature of the charges.

15 I must suggest that I find the indictment is not confusing,

16 nor ambiguous so as to require dismissal on those grounds.

17 And I find it is sufficient as being presented to apprise

18 the defendant fairly of the charges against him so that he

19 may fairly meet those charges.

20 You may proceed.

21 MR. SCHWARTZ: Your Honor, with respect to the
22 government focusing on the Monell case, I would like to
23 say that if the government intends to focus on other criminal
24 cases or other law enforcement cases in which we believe
25 Mr. Doulin was an influence and which would be relevant

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2 to the perjury charges, we would advise defense counsel of
3 those other cases and give them discovery equal to the
4 discovery that we have given in the Monell case and, of course,
5 we give them as much notice as we possibly could.

6 We would do our best to keep them apprised
7 of that information.

8 THE COURT: What you are saying that it is your
9 intention at the trial of his case to focus on the Monell
10 case and that Mr. Doulin's involvement with that case.

11 MR. SCHWARTZ: I am. I just don't want to pre-
12 clude the government as your Honor and Mr. Platzman knows, in-
13 vestigations are always flowing into a prosecutor's office and
14 I don't want to limit the government's case if it turns
15 out that we find out information in ample time before
16 the trial to give the full and necessary discovery to
17 Mr. Platzman.

18 THE COURT: If there is ever a surprise on the
19 defendant, it would obviously call upon the Court to grant
20 a continuance or otherwise to provide for the surprise.
21 I understand it here at the present time, October 31, 1975,
22 the government's perjury case against Mr. Doulin is based
23 on and focused on the so-called Monell case.

24 MR. SCHWARTZ: That is correct, your Honor.

25 Your Honor, the last point I'd like to turn to or

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one of the last points is the recent Cannone decision by
the Court of Appeals relating to the furnishing of the
witness list by the government on demand by the defend-
ant.

THE COURT: I am inclined toward the view that
you have expressed. I read that case when it came down.
It reversed one of my brother judges from another district
in this circuit. I would suggest that when you get involved
in certain areas, perjury tampering and so on, you must
be somewhat more restrictive in what you do. The matter is
very much in the Court's discretion and my own reading of the
case, I must say at least in this regard, there is more in the
direction of your reading of the case than Mr. Platzman's.
But I will hear you on it if you want to embellish on it.

MR. SCHWARTZ: No, your Honor. I don't think
I can add to it.

The last point which is really going into a
different area not related to the motions and if your Honor
wants me to hold a few additional matters I have which are
in the nature of housekeeping and getting ready for the
trial, I will hold them at this point.

MR. PLATZMAN: If I may.

I must commend counsel on not discussing the
Cannone case any further since having won the point.

2 THE COURT: Therefore, it is incumbent upon you
3 to rise and discuss it further.

4 MR. PLATZMAN: With respect to that case.
5 We urge at least there is a presumption from that case that
6 the defendant is entitled to the identity of the witnesses
7 and their addresses, and the burden would be on the govern-
8 ment to establish something more more, I think, than
9 just that it is a perjury case. The Court of Appeals
10 stated if I may read a rather significant, just a few
11 lines, "Implicit in this statement" referring to a prior
12 decision when they were commenting on the Baum case
13 "is the notion that once the defense moves for disclosure
14 of the identity of the government's witnesses, the
15 government bears the burden of making a prima facie showing
16 that such disclosure would not be in the best interest
17 of justice."

18 Now I don't think that exists in this case.
19 I mean he is a man who's had an enviable reputation all his
20 life. He's accused of perjury and I think and I would
21 like to refer back, read for instance one portion of 1 or
22 2 of the counts. I certainly think that we should
23 know who it is claimed we spoke with, whom we spoke, and
24 when I say "we," Mr. Doulin spoke, as to have tried to
25 influence justice. If it was strictly the Monell case,

1 and I am accepting this as counsel's statement and I am
2 pleased at least we have at this hearing provided some
3 disclosure that I know we are not all over the lot. We are
4 now talking about the Monell case as your Honor concluded.
5 I might have guessed at that but I wasn't that sure.
6 Your Honor's position in pinpointing it to the Monell
7 case is very helpful to the defendant.
8

9 At least, we know it is that case and not twenty
10 others we would be concerned with. I am also thankful to
11 counsel for having accepted your Honor's statement in that
12 regard. I say in having done so, we should even in the
13 Monell case know what the government is claiming we
14 actually did.

15 The question was asked and if I may look, if your
16 Honor may look at Count 1 as to whether or not and the
17 statement was made "We are concerned to know whether any
18 public official in Orange County ever received any money
19 or any other kind of valuable things in return for playing
20 any part in attempting to influence the local law enforce-
21 ment in that county." That applies to any government
22 official.

23 Then the next question is just as broad and he
24 wants to know "whether in any way been involved in
25 any conversation or discussion with any one on the subject

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2 of you personally in any way receiving anything of value
3 to help influence law enforcement or gambling in that
4 county."

5 Obviously gambling wouldn't have anything to do
6 with Monell which was an assault case.

7 I say that is so vague we are certainly entitled to
8 know when this was supposed to have taken place. Suppose
9 the claim is made on the trial that this took place on
10 January 8th and Mr. Doulin might not even remember at the
11 time of the trial but on January 8th, he was in Germany.

12 Wouldn't it be right for him to be able to know
13 what the claim was so that he could establish where he was
14 at the time? Shouldn't we know whether this was a per-
15 sonal confrontation. Was it a telephone call, was it a
16 communication by mail, by interstate commerce? What was
17 offered? Maybe we don't have to know exactly
18 how many dollars it is claimed but certainly that dollars or
19 something of value. The question is broad and I think
20 in my brief, I have referred to quite a number of cases
21 which indicate that where the question is broad and general
22 and therefore can't be a directed response, that that's
23 not perjury. Indictments have been dismissed on that
24 ground -- cases have been dismissed, I should say. If there
25 is no modification of it at this point I say we are in no

2 different position. With respect to -- as an example
3 Count 3 is almost as broad, the United States Attorney
4 recommended this and his question was and only one question
5 and answer "Mr. Doulin, has anyone ever" -- look at the broad-
6 ness of this. "has anyone ever at any time offered you any
7 money or anything of value". Practically every other
8 word is generalized. "And you say in its broad sense
9 try to influence your conduct in any way whatsoever on
10 anything."

11 Now, that's a broad question and I don't mean to
12 be unfair about it. He even recommended how broad that
13 question is. But he was unfair about it. I can't for the
14 life of me see anything, and then he answers it to the best
15 way he knows how. There are cases that would be a de-
16 fective count. It is too broad a question. To make certain
17 that the man is specifically lying that man must be charged
18 with this to anything that is asked about him.

19 I think there are more "any's", in this
20 particular question than I have ever seen in any one para-
21 graph and they are all squeezed into five or six lines.
22 He winds up admitting, I don't mean to be unfair about it.
23 I think it is a broad question. I think counsel has
24 labelled it. I say this is just typical. The other
25 counts are very similar. In one instance they do name

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2 Mrs. Grant but that too is broad, we don't know, where,
3 how, the circumstances. At least identify when this was
4 supposed to have taken place. What means, by letter,
5 interstate commerce? We say if that is pinpointed we are
6 in a better position to determine is this really an
7 investigation of the state laws because the Monell case
8 was a state violation? Is it the gambling laws?
9 Obviously it is not. Monell has nothing to do with
10 gambling. We say there should be and I am pleased with the
11 level of disclosure at this point but it hasn't gone far
12 enough to really justify the ability of this defendant to de-
13 fend himself.

14 We are asking your Honor to at least reconsider
15 this one question of requiring the United States Attorney's
16 office to supply us with respect to each one of these
17 counts, substitute for the word "any". In any instance
18 where he uses the word "any", whether it be time, person
19 or consideration, I would like to see a substitute for the word
20 "any" so we know what we are talking about.

21 THE COURT: Mr. Schwartz, do you want to respond?

22 MR. SCHWARTZ: My only response, your Honor,
23 Mr. Doulin did not indicate at any time in the appearances
24 that he was confused by the questions. In fact he was
25 happy to answer the questions and the whole tenor of his

answer and the wording that he used made it clear that he had no doubts he was capable of answering the question and he then responded to the questions.

MR. PLATZMAN: May it please the Court, are we getting any additional information on the Brady, may I ask that?

MR. SCHWARTZ: I had intended to do it by letter. But I am certainly willing at this point to advise Mr. Platzman that there are four witnesses that the government feels should be identified under the doctrine of Brady.

I think they are all known to Mr. Platzman because apparently they have been interviewed in the newspapers in Orange County but I should state I am also advising him, Mr. and Mrs. Grant, the grandparents and Mr. and Mrs. Monell, the parents of Richard Monell.

MR. PLATZMAN: I might state while Mr. Doulin according to your interpretation knew what you were asking, I found frankly, I don't know and I can't identify it when you have an any pyramided upon an any. I don't know whether it is specific. He may have believed he was understanding what you were asking. I think that is the deficiency in these cases that have been pointed out, I referred to in my brief, to justify dismissal of the claims and charges against the defendant. But where the questions are vague

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2 even though the defendant does answer them, that does not
3 constitute perjury and that is the question we will get to
4 ultimately and probably in the trial.

5 I think in any event with respect to the counts as
6 I referred to them, they still refer to the single crime,
7 Counts 1, 2 and 3.

8 There is no distinction. I don't think counsel
9 has answered that. They are still the same act, same
10 complaint including the any.

11 THE COURT: It may be it would be appropriate
12 for the Court to consider that matter at the end of the
13 presentation of the government's case at that time deciding
14 on the proof actually adduced, possibly to dismiss one or
15 two or three counts of the indictment, possibly to dismiss
16 all of them.

17 I think it is a very difficult task to undertake
18 at this stage of the proceedings in view of the way the case
19 is set up. I can see an argument here that three counts to which
20 we are presently making a reference in essence are a split.
21 I can see an argument there. But at the same time I
22 think it is necessary to have the proof developed in order
23 to determine whether the argument has substance or not.

24 The point here is on a motion to dismiss, if the
25 indictment is not confusing or ambiguous and I suggest that

1 in this court's view it is not, a motion to dismiss at this
2 pretrial stage should be denied. I would also comment
3 briefly upon your jurisdictional point..
4

5 The Court believes that a very broad scope is
6 accorded grand jury investigations including violations that
7 become apparent as the investigation proceeds, although not
8 originally considered as a specific target. I suggest that
9 the questions here appear to have been material and the
10 subject matter would appear to cover possible violations of
11 federal law. Under the circumstances, I would reject
12 the jurisdictional argument which is presented in your
13 motion to dismiss. The Court is prepared to rule on the
14 three motions before it, unless counsel would like to make
15 additional comments.

16 MR. PLATZMAN: No, your Honor. Only that I urge that
17 the 1 to 3 and 5 to 8 indictments are really the allegations
18 with respect to a single crime and that can be determined
19 from the face of the indictment. I agree that your Honor
20 should always be reluctant at a pretrial stage to dismiss
21 an indictment that normally the evidence should be
22 developed to determine the basis of such a dismissal and the
23 insufficiency of any claim.

24 It is the same problem that exists in any type of
25 litigation when an attempt is made to dismiss at the time

of an action or opening. I agree that the prosecutor must be given every reasonable doubt and every possible interpretation. But on its face certainly 1, 2, 3, as a group and 5, 6 7 and 8 also as a group refers to merely the same event. Just splitting up words. We ask your Honor to reconsider that that these constitute only two separate claims if they are validly alleged and even if they are not because there is certainly some question at this stage. But certainly to split it up, to approach him, talk to him and then offer money all in the different situation. I say that's the same crime. There is no attempt to prove it was a separate crime because there is no separate crime.

THE COURT: You have to let the proof develop as to what actually happened. These are separate questions, therefore I will let those particular counts to which reference has been made stand at this stage.

Although I will examine the proof as it comes in and hear you at the end of the government's case relative to whether or not they have been able by their evidence to support the particular counts to which we have made reference here this afternoon. So I think the Court is prepared to give a decision.

MR. PLATZMAN: I have nothing further.

MR. SCHWARTZ: Nothing further.

1 THE COURT: I have made my comments and I
2
3 incorporate the comments made from the bench as part of my
4 oral decision. Turning first to the defendant's motion
5 to dismiss the indictment. The motion is granted as to
6 Count 4. And it is denied as to the remaining counts,
7 in accordance with the oral decision rendered on this date.
8 It is so ordered. I will endorse those papers accordingly.

9 Turning to the motion to inspect the grand jury
10 minutes, inasmuch as the defendant has demonstrated no
11 compelling reason to inspect the grand jury minutes beyond
12 his own testimony which has been furnished to him, the motion
13 is denied except as consented to by the government.

14 It is my understanding that all the minutes as to
15 which consent was given have by this time been furnished
16 to the defendant, is that correct, Mr. Schwartz?

17 MR. SCHWARTZ: That is correct, your Honor.

18 THE COURT: I will endorse those papers "Inasmuch
19 as the defendant has demonstrated no compelling reason to
20 inspect the grand jury minutes prior to trial, the motion
21 is denied except as consented to by the government."

22 Turning to the third motion, the motion for a
23 bill of particulars, I think you have gotten your particulars
24 to the extent that they are appropriate in two forms.
25 No. 1, the government did make a summary and No. 2, which

I considered to bind them now in the form of the particulars and No. 2, we did limit the case at this juncture to be Monell case. Accordingly I will endorse the motion for a bill of particulars as follows: Motion for bill of particulars denied except as consented to by the government. The particulars shall be deemed those heretofore furnished by the government and set forth in open court. Each of those motions shall be endorsed as indicated and I shall so order them.

I believe that disposes of the pretrial motions and I turn now to setting a date for trial.

MR. PLATZMAN: I must apologize to the court. There was one other thing I think I had forgotten to bring up. Counsel had indicated in a communication to our office that he intended to supply us with a copy of the confession by Mr. Weissman and that that confession will be supplied within three days prior to the trial where we are thankful that counsel has agreed that that should be supplied but we certainly feel that three days is cutting it pretty thin and it hardly gives us enough chance to try to, if that becomes necessary to investigate and obtain witnesses to do anything that might be essentially other than the defendant's own testimony which is not going to defend himself. So we think that time ought to be

2 enlarged.

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3 THE COURT: Perhaps much of this will become
4 academic when we turn to the next subject which is to
5 set the trial date.

6 MR. PLATZMAN: Yes, your Honor.

7 THE COURT: It appears to the Court that it is in
8 the interest of justice to set this case down for an early
9 trial. Accordingly I am prepared to do so.

10 Mr. Schwartz, I would inquire of you, how long you
11 estimate the government's case to take?

12 MR. SCHWARTZ: Your Honor, I would think that the
13 government's case would be completed in five trial days.

14 THE COURT: And the defendant?

15 MR. PLATZMAN: Well, truthfully two things. One,
16 I really don't know, and maybe even to support the position
17 that I have taken, I don't know until I find out what they are
18 going to say. I think essentially this is still factual.
19 I would guess if it took them five days, I would have to
20 guess at that, it ought to take us perhaps four or five
21 days.

22 THE COURT: I don't want a guess because I want
23 to set a firm date.

24 MR. PLATZMAN: All I can say it is an intelligent guess
25 based upon what counsel is saying. I really don't know what

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claims are going to be made and I still don't know. I would like to state that we can perhaps intelligently guess at this period of about four to five days and I will probably say that will be practically correct if they will take that period of time. I don't think we should run beyond that.

THE COURT: I have never yet seen a defense run beyond a government's case. The government has indicated they can be ready for trial within seven days.

Is that correct?

MR. SCHWARTZ: That is correct, your Honor.

THE COURT: Seven days notice would put that on Thursday, November 6, 1975, trial will commence on that date at 10 a.m. in courtroom 619.

MR. PLATZMAN: Would your Honor excuse me for just a moment.

I would like to confer about this case.

THE COURT: Yes.

(Pause.)

MR. PLATZMAN: Could your Honor make that for the following wee ?

THE COURT: Unfortunately not. I am committed beginning on the 17th and I have calculated what we will require and I have given you those two days, the 6th and the 7th and the entire following week.

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2 MR. PLATZMAN: The only reason I suggest it,
3 Mr. Rosenblum is not well at the moment and I understand he
4 intends to try it.

5 THE COURT: The problem is that I am committed to
6 serve, beginning on Monday, November 17th as the Part I or
7 emergency judge in this court and therefore this case would
8 begin on Thursday November 6th and we will have full trial
9 days, 6th, 7th, 10th, 11th, 12th, 13th, 14th and if necessary
10 we work the weekend. This case will be tried and con-
11 cluded, I trust by Friday, the 14th of November. It is
12 adequate time from the way I read this case. This is not
13 a multi defendant, multi-count conspiracy case which might
14 take me four weeks.

15 MR. PLATZMAN: May I try to reach Mr. Rosenblum?

16 THE COURT: There is nothing more to discuss.
17 If it isn't Mr. Rosenblum it will be Mr. Platzman. You are
18 here and thank God, you are well.

19 MR. PLATZMAN: Except we don't have the
20 disclosure.

21 THE COURT: I thought if we set the trial date
22 it would eliminate many of the problems if the matter were
23 extended over many months. I am prepared to begin on the
24 date in question and I will work day-to-day and I aim
25 to complete this case because I do have the obligation to serve

as the Part I emergency Judge beginning on November 17th.

MR. PLATZMAN: I will communicate this with Mr. Rosenblum and we will take it up in there.

THE COURT: That will be 10 a.m., courtroom 619. When can we get this confession to Mr. Platzman?

MR. SCHWARTZ: We will have it to him by Monday.

MR. PLATZMAN: May I take these tapes?

MR. SCHWARTZ: Yes. Those are the tapes referred to in a prior letter to Mr. Platzman.

MR. PLATZMAN: I think you also said you were going to make copies of some other documents left at your office.

MR. SCHWARTZ: That is still open and I didn't have a chance to give it to you beforehand.

Mr. Platzman asked me to copy the entire District Attorney's office file other than the D.A.'s grand jury minutes and the entire probation file on Monell and make it available to him. I told him I would think it over and upon thinking it over and I stated in my letter to him, I didn't feel I should be copying an entire file from the D.A.'s office or the Probation Office's file which has a lot of personal material in it.

I did make both of those files available to Mr. Platzman at my office. I said in my letter if he has requests for certain specific documents with the

2 respective offices, the D.A.'s and the Probation office.

3 THE COURT: The main thing he has had the
4 opportunity to see them and make whatever notes he deems
5 appropriate.

6 MR. SCHWARTZ: I will continue to make them
7 available to him.

8 MR. PLATZMAN: May it please the Court, counsel
9 has not indicated what part, if any, of these records he
10 intends to use.

11 Now I can make a copy of one letter and then counsel
12 may use some other letter in this file. He has stated to
13 me that what he is going to use on the trial is the probation
14 report, full, and the D.A.'s file, full.

15 Now I said "Let me have a copy of it of what you say
16 you are going to use." Now he may not use all of it. But
17 at least if there is that decision, I can make a copy of one
18 thing and then find out that wasn't what he had in mind.
19 I would be playing Russian roulette.

20 MR. SCHWARTZ: I haven't said to Mr. Platzman what
21 I would or would not use in those files. It is for the very
22 reason I would not want to surprise him of pulling one
23 specific document out of the file. That's why I made
24 them entirely available to him. It is not the volume that
25 troubles me about copying, it is the contents. I made them

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available to Mr. Platzman. He was here one afternoon to look at them. A copy of other documents at the government's expense we made available to him. These other records, the probation file and I might add the family court file which he may have some interest in will also be made available to him.

But I don't think I should be copying the files of these really confidential and privileged offices and distribute copies of them. I feel uncomfortable about it.

THE COURT: If Mr. Platzman can obtain an authorization from these offices to have you copy the file and give him the copies, you are directed to do so. Otherwise you are to make them available to him at your office at a mutually convenient time and place.

MR. SCHWARTZ: I will certainly comply with that, your Honor.

MR. PLATZMAN: I would have to sit down and copy everything because I don't know what he is going to use.

THE COURT: He will give you everything if you get an authorization from the county people up there that he may do it. That's what I hear him saying.

MR. SCHWARTZ: That's exactly right, your Honor.

MR. PLATZMAN: Suppose I don't.

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2 THE COURT: If you don't, then you have to⁴¹ come 63 d
3 down here, look, make notes, and I would suggest if there
4 are particular things that you want copies of and they
5 consist of one or two documents, I will tell you now,
6 I direct him to furnish them to you. But a blanket file
7 or a blanket copy of the file will have to be authorized
8 by the people who made up the file in the first place.
9 Mr. Schwartz has got them under subpoena. The subpoena
10 by my standards would be limited in scope to his having them
11 to produce at trial, not to give copies of an entire trial
12 to an attorney in a case. Therefore, I give you two options.
13 I will repeat it once more. Option No. 1 is to get author-
14 ization from the custodians or the owners of the file, so to
15 speak. The United States Attorney may supply you with
16 copies. If you have blanket authorization he is now
17 directed to give you everything.

18 If you are unable to get blanket authorization
19 but can get limited authorizations, he can give you whatever
20 you get within the limits of whatever you have been
21 authorized to get in the limited fashion, plus you may have the
22 right to come here and examine the files at your mutual
23 convenience.

24 That's the best I think I can properly do.
25 I don't think I have jurisdiction over the files to such

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2 an extent that I should say blind, he should copy and give
3 each and every one of them to you.

4 MR. PLATZMAN: I am willing to pay for them.

5 THE COURT: It is not a question of paying.

6 If the local people up there say he can make copies and give
7 them to you, he is directed to do that and you may have them.
8 If they don't, you may have a full inspection here at the
9 courthouse.

10 Thank you, gentlemen.

11 There is just one final point before we conclude
12 for the day, Mr. Schwartz.

13 Would you identify at this time the : stated sworn
14 statement of Mr. Weissman to which reference has previously
15 been made.

16 MR. SCHWARTZ: That sworn statement, your
17 Honor, is the sworn testimony of Mr. Weissman before the
18 January, 1975 additional grand jury, the same grand jury
19 before which Mr. Doulin appeared.

20 THE COURT: I gather there is no issue among
21 us here that Mr. Wiessman is now deceased, having died
22 within the last several months?

23 MR. PLATZMAN: No dispute about that, your
24 Honor.

25 MR. SCHWARTZ: Yes, I believe that a nolle has

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been filed with respect to Mr. Weissman's perjury indictment,
your Honor.

THE COURT: Thank you, gentlemen.

Good evening.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v. : 75 Crim. 630

WILLIAM E. DOULIN, :

Defendant. :

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Before: HON. ROBERT J. WARD,

District Judge, and a
Jury.

New York, New York
November 6, 1975 - 10:00 a.m.

Present:

THOMAS J. CAHILL, Esq.,
United States Attorney for the Southern
District of New York,

By: BART M. SCHWARTZ, Esq., and
ROBERT J. JOSSEN, Esq.,
Assistant United States Attorneys.

MICHAEL M. PLATZMAN, Esq.,
Attorney for defendant.

(In open court)

THE COURT: Miss Kruger, will you call the case which was set down for trial this morning.

THE CLERK: United States of America v. William E. Doulin.

MR. SCHWARTZ: Ready for the Government.

MR. PLATZMAN: Ready for the defendant.

(A jury of twelve and four alternate jurors were duly empaneled and sworn.)

THE COURT: At this time I would like to thank and excuse those prospective jurors or our original group of thirty-five, some of whom are still awaiting a call, and all those other jurors who assembled here. I wish to thank you on my own behalf and on behalf of the Court in which I sit.

Jury service in my judgment is one of the highest duties of citizenship along with voting. It means a great deal in the administration of justice that a defendant in our country can be judged by his peers, by his fellow citizens. It is one of the greatest protections built into our Constitution, and that is why jury service is so important and must be taken seriously, as I know it has been by all of you, and it is the type of service which, although it takes you from your homes and from your

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businesses is most important for the proper administration
of justice.

At this time I wish to thank those jurors who
were not selected for service in this case and to wish
you well. The jurors not selected are excused by the
court.

(Jurors not selected leave the courtroom.)

THE COURT: Ladies and gentlemen, as soon as the
jurors file out I shall address you briefly, and then
excuse you for lunch.

I know that several of you have served previously,
but there are at least a few jurors here who have not
and, therefore, I am going to give you certain instructions.

Following my remarks to you we will recess for
lunch, and the jury will be asked to return in one hour,
that is, one hour after we recess. At that time the
Government will make an opening statement outlining its case.
The defendant may at that time make an opening statement
outlining the defendant's case.

The opening statements are not evidence. They are
somewhat like looking at a road map before you go on a
field trip. They are to aid you in generally understanding
the nature of the case and the significance of evidence
when it is introduced.

After the opening statements are made, the Government will begin by presenting its evidence. At the conclusion of the Government's evidence, the defendant has the right to introduce evidence. However, he need not do so. You should not draw any presumptions or conclusions from the fact that he does not do so.

In the event the defendant introduces evidence, the Government may at that point introduce rebuttal evidence.

At the conclusion of all the evidence, counsel will make their closing arguments, sometimes known as summations, to you. The law applicable to this case will be contained in the instructions I give you at this time, during the course of the trial, and in my so-called charge, given just before you retire to deliberate on the case.

It is your duty to follow all my instructions on the law. Your province is to determine the facts and to determine them from the evidence and the reasonable inferences arising from such evidence, and in doing so you must not indulge in guesswork or speculation. The evidence which you are to consider consists of the testimony of witnesses and those exhibits which are admitted into evidence.

The term "witness" is anyone who testifies in

person or by a deposition. If there are any depositions, I will explain that matter further at the time it occurs.

The admission of evidence in court is governed by rules of law. From time to time, it may be the duty of one or the other or both attorneys to make objections. It is my duty as judge to rule on those objections, as to whether you can consider certain evidence. You must not concern yourselves with the objection or the Court's ruling. You must not consider the testimony or exhibits as to which an objection was sustained or ordered stricken.

The opening statements and the summations of counsel are to help you in understanding the evidence and applying the law, but they are not evidence. You must not be influenced in any degree by a feeling of sympathy or of prejudice against the Government or the defendant, for each is entitled to the same fair and impartial consideration.

No statement or ruling or remark which I may make during the presentation of testimony is intended to indicate my opinion as to what the facts are. You, the triers of the fact, are to determine the facts. In this determination, you alone must decide upon the believability of the evidence and its weight and value.

In considering the weight and value of the

1 testimony of any witness, you may take into consideration
2 the appearance, attitude and behavior of a witness, the
3 interest of the witness in the outcome of the case, the
4 relation of the witness to the Government, a Government
5 agent or otherwise, or the relation of the witness to
6 the defendant, the inclination of a witness to speak
7 truthfully or not, the probability or improbability of the
8 witness' statements, and all other facts and circumstances
9 in evidence.
10

11 Thus, you may give the testimony of any witness
12 just such weight and value as you may believe the testimony
13 of such witness is entitled to receive.

14 You will recall, I told you that the defendant
15 has pleaded not guilty. Under our system of law, he is
16 presumed innocent. It is up to the Government to establish
17 the guilt of the defendant beyond a reasonable doubt.

18 It is your duty not to discuss this case among
19 yourselves while it is in progress, or with others, or to
20 permit others to speak with you about this case, or to remain
21 in the presence of other persons who may be discussing this
22 case. This admonition about not discussing the case with
23 others includes discussions even with members of your own
24 family when you go home, or friends, during the course of
25 this trial. You should not discuss the case with anyone,

family or friends. If any person should attempt to communicate with you or talk to you about this case at any time, or you should learn anything about this case from any source outside this courtroom, it is your duty to report that matter to me at once.

Finally, you are to keep an open mind and must not decide any issue in this case until the case has been completed following my charge, and has been submitted to you for your deliberations and consideration.

At this time we will take a one-hour luncheon recess. According to the courtroom clock, it is not almost ten minutes past 1:00. The jury is excused.

Miss Kruger will show you where you are to reassemble. We will begin the opening statements of counsel promptly at 2:15 p.m.

The jury is excused.

(The jury leaves the courtroom.)

MR. SCHWARTZ: Your Honor, just so the Court will know when the times comes, Mr. Jossen will open for the Government.

THE COURT: I assumed he would open and you would sum up.

One final thing before you go. It is my practice to request counsel and the parties and their families to

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remain in the courtroom for about five minutes after
the jury has filed out so that they can pick up their
things and get the elevator and go down, so that we
don't have the embarrassment of sharing an elevator with
the jurors.

Counsel and Mr. Doulin are excused. We will
resume at 2:15.

(Luncheon recess)

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AFTERNOON SESSION

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2:15 p.m.

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(In open court; jury present)

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THE COURT: Good afternoon, everyone.

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Our jury is prompt as are all the others.

7

Ladies and gentlemen, we will begin the trial

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now. The first step will be the opening statement of

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counsel.

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We will hear from Mr. Jossen on behalf of the

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Government and Mr. Platzman on behalf of Mr. Doulin.

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We will try to keep the courtroom as comfortable

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as possible for you. In the event you do find that it is

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not comfortable by virtue of being too warm or too cold,

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let Miss Kruger know and we will see if we can help you.

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If the sun happens to be shining in your eyes, which does

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happen on occasion, and we can do something about it,

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we will certainly do so. If you can't hear, let me know.

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We will try to have the witnesses keep their voices up so

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you can hear everything.

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Finally, you are not permitted to take notes.

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Some of you may be aware of this, but I tell it to you now.

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Don't be concerned. Listen closely. I tell you now at the

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end of the trial when you deliberate, if you should want to

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look at any exhibits, you may ask for the exhibits to be

sent into the jury room. If you should want any testimony repeated during the course of your deliberations, you can send out a note, that's all you have to do, and we will see your request is honored.

The court reporter will be taking down all the questions and answers and, therefore, they will be available to be read back to you, should you require it.

We will begin now with the opening statements of counsel.

Mr. Jossen.

MR. JOSSEN: May it please the Court, Judge Ward, Mr. Platzman, Mr. Foreman, ladies and gentlemen of the jury:

Good afternoon.

This is a criminal trial. This morning, before we took a luncheon break, each of you took a solemn oath to render a true, fair and just verdict in this case.

On June 25, 1973, and again on February 12, 1975, William Doulin, this defendant, also took a solemn oath, a solemn oath to testify truthfully and fully to a federal grand jury. This case is about that oath, ladies and gentlemen. It is about perjury, false testimony which it is alleged in the indictment was given by William Doulin about fixing a State Court criminal assault case in

Orange County.

My name is Robert Jossen. I am an Assistant United States Attorney. Seated at counsel table is Bart Schwartz, who is the Assistant Chief of the Criminal Division in our office. This morning you saw there also Mr. Bob Reutter. Mr. Reutter is a special agent with the Federal Bureau of Investigation and will be sitting at counsel table with us during this trial. Together, it is our privilege and responsibility to represent the United States here and to present this criminal case to you.

Now, as I told you, this is a perjury trial, but the nature of this case will also give you a unique glimpse into the workings of a district attorney's office and a county court system. This is so, because to prove that Mr. Doulin didn't tell the truth when he testified before two federal grand juries, the Government expects that the evidence in this case will focus on what happened in a criminal assault case in Orange County, New York, involving a defendant by the name of Richard Monell, a man who shot someone in Newburgh, New York.

The indictment in this case alleges that in Mr. Doulin's testimony before two different federal grand juries he was asked whether he had ever been involved in any conversation with anyone on the subject of his receiving

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anything of value to help influence law enforcement in Orange County. He was asked whether he ever been approached by anyone to exert influence in connection with criminal matters. He was asked whether anyone had ever offered him anything of value to influence his conduct in any way. He was asked whether he had ever solicited anything of value to interfere or intercede in any case. He was asked whether he had ever interceded in any criminal case. He was asked whether he had ever had a conversation with a woman by the name of Mrs. Grant in relation to the case of her grandson, Richard Monell, and he was asked whether he ever interceded with anyone on behalf of Richard Monell's criminal court case.

To all of these inquiries, ladies and gentlemen, Mr. Doulin, under oath, flatly denied he ever interceded for anyone in any manner, and he denied helping Richard Monell.

The indictment here alleges that those denials were false and that they were made by Mr. Doulin knowing them to be false.

The Government submits that at the end of this trial the evidence will show that William Doulin did interfere in Richard Monell's criminal case, and that he succeeded in obtaining a sentence of probation, in cther

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words, he prevented Richard Monell from going to jail, and that, in return for his intervention, Mr. Doulin was paid the sum of almost \$1,500 by Mrs. Jean Grant, the grandmother of Richard Monell.

That is what this trial will be about. It's that simple: Did William Doulin testify falsely under oath?

Now, you will hear the evidence in this case, the story of what happened from witnesses who will testify here, testify from that stand under oath, and from exhibits which will be offered in evidence.

Of course, in a trial, in any trial, we must take witnesses one at a time to tell us about events and things which might have happened to several people at one time. That, of course, is not the real world. So you will have to listen carefully to each witness to see how his or her testimony fits into the overall picture which you will have at the end of the trial after you have heard all the testimony.

To help you do this, to help you put the case in a perspective and to see what the whole picture will look like at the end of the trial, it is the function of this opening statement to give you an outline, as his Honor said this morning, a road map of what the Government expects

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2 the evidence will show at the end of the trial, and the
3 Government expects that at the end of this trial, after
4 you have heard all the evidence, you will be satisfied
5 that the evidence proves him guilty.

6 One night in April 1968, Richard Monell was
7 at a bar in Newburgh, New York, which is in Orange County,
8 with his girl friend, Flo York, now Flo Hall. Mr. Monell
9 saw a man there by the name of George DeWeaver, a man
10 with whom he had a fight some time before. Outside the
11 bar, without provocation, Monell ruthlessly, cold-bloodedly
12 shot George DeWeaver at point-blank range, severely
13 wounding him.

14 Monell was subsequently arrested, indicted, and
15 after the passage of some time, due to court delays and
16 other proceedings, Mr. Monell pleaded guilty to attempted
17 assault.

18 Then, ladies and gentlemen, the evidence will
19 show that there came a time on March 5, 1971 when Monell
20 was to be sentenced. Monell's lawyer, a man named Norman
21 Shapiro, was in court and represented him and addressed
22 the Court, asking for leniency for his client. Also in
23 court that day was the district attorney of Orange County,
24 a man by the name of Jerome Cohen, who was representing
25 the people of Orange County.

Mr. Cohen, the evidence will show, stated that he had no recommendation to make. The judge, Judge Abraham Isseks of Orange County, then sentenced Modell. The evidence will show that Judge Issels had before him a probation report from the Orange County probation department, a report which showed that Richard Monell had been in trouble with the law before, stolen cars, burglary and other crimes.

The judge referred to the fact that the crime before him was a serious one, that, but for good luck, Richard Monell could easily have been before him for murder. Judge Isseks then sentenced Richard Monell to jail, to a term of imprisonment not to exceed 2-1/2 years at Sing Sing prison. That sentence, zero to 2-1/2 years, you will hear during the trial was illegal under the laws of New York. The judge had sentenced Richard Monell under a law which was not then in effect. So Richard Monell had to be resentenced.

The evidence will show that he was kept in the Orange County jail until his resentence.

Finally, the evidence will show, on March 26, 1971, Richard Monell was to be resentenced. On that day, Mr. Shapiro, the defense lawyer, was present in court again. The judge, Judge Isseks, was present again. This

time, however, the district attorney's office was represented not by the D.A., Mr. Cohen, but by another man, an assistant district attorney by the name of Abraham Weissman, and then, ladies and gentlemen, the evidence will show something unusual happened.

Mr. Weissman stood up and said to the Court, said to Judge Isseks, that since the first sentence, the sentence when Richard Monell had been sentenced to jail, the district attorney's office had received a number of calls from responsible citizens who had urged that Mr. Monell be treated with leniency. So Mr. Weissman asked the Court to consider probation for Monell, in other words, to release him immediately and not to send him to jail at all.

The evidence will also show, ladies and gentlemen, that the judge then referred to the assistant district attorney's recommendation for probation, and told Mr. Monell that he was going to give him another chance, and the evidence will show, ladies and gentlemen, that Judge Isseks sentenced the same man whom he had sentenced to prison only three weeks before to probation. He let him go free without going to prison at all.

How did Richard Monell get a sentence of probation the second time, no jail? The evidence will show, ladies

and gentlemen, that while Richard Monell was in custody between his first sentence and the resentence when he got probation, and even before that time, his grandmother, Mrs. Grant, Jean Grant, and others, were actively at work to get the help of an old family friend, a friend who also was the powerful chairman of the Republican Party committee in Orange County, William Doulin.

The evidence will show that Mrs. Grant also contacted Mr. Doulin before Richard Monell was ever sentenced, that Mrs. Grant was promised and expected that her grandson would receive a sentence of probation. What went wrong in early March, 1971, the evidence will show, is that William Doulin was on vacation in Florida at that time. The Government will prove that after Monell received the first sentence, the jail term, after it appeared that something had gone wrong with the fix, that Mrs. Grant made some frantic calls. The defense lawyer, Mr. Shapiro, was called. The former district attorney who had then become a county judge, Judge Angelo Ingrassia, was called by Mrs. Grant, and in both of those calls Mrs. Grant complained about her grandson's jail sentence and she wanted to know what had happened.

The evidence will show that Mrs. Grant tried to reach Mr. Doulin, but Mr. Doulin was away on vacation.

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2 Finally, ladies and gentlemen Doulin arrived
3 home. The evidence will show that when he returned home
4 he was able to take steps to help Richard Monell on his
5 resentence, to intercede on Richard Monell's behalf in his
6 criminal case, and after Monell got his promised sentence
7 of probation, the evidence will show that Mr. and Mrs.
8 Grant drove to their bank in Rosendale, New York, and with-
9 drew the sum of \$1,480, leaving their bank account with
10 \$9, and that they took that money to Mr. Doulin's place
11 of business, his funeral home, and that the payment was
12 made for a sentence which Mrs. Grant had described as
13 having been bought and paid for.

14 How will the Government prove this? Well, you
15 will have the unique opportunity in this case to hear
16 from some of the people who were on the inside of this
17 fix. Flo York, now Flo Hall, the evidence will show,
18 drove Mrs. Grant while Richard was in jail waiting for
19 his resentence. She was told by Richard's grandmother
20 that Doulin was to guarantee a sentence of probation.
21 She saw Mrs. Grant make phone calls to the Doulin home and
22 in late March, 1971, Mrs. Grant told Flo Hall that it was
23 going to cost her nearly all the money the Grants had
24 in their bank account to get Richie out of jail.

25 And then Flo Hall drove Mr. and Mrs. Grant to

their bank. And where did Flo Hall drive with Mrs. Grant from the bank? The evidence will show that she drove with Mrs. Grant to the Doulin-Zillig Funeral Home, the funeral home run by Mr. Doulin, who is also a funeral undertaker, that Mrs. Grant got out of the car, went into the funeral home, returned to the car and told Mrs. Hall Doulin had company.

The evidence will show that the money was left with Mr. Doulin to pay off for Richard Monell's suspended sentence.

Against this background, ladies and gentlemen, the evidence will show that Mr. Doulin was called to testify before two federal grand juries which were investigating possible federal crimes in Orange County.

When he appeared, the evidence will show, he gave the testimony alleged in the indictment.

Mr. Doulin was asked, in other words:

"Mr. Doulin, either as head of the Republican Party or as a private citizen, did you ever try to influence the outcome of a criminal case? Did you try to influence judges or district attorneys? Did you try to help Richard Monell? Did you do any of these things? Did you do them for money? Did you, in other words, ever fix a case or try to?"

And Mr. Doulin flatly denied that he had done anything.

That testimony, the evidence will show, was in significant part false. It was false, the evidence will show, because William Doulin did intercede on behalf of Richard Monell, because he contacted someone in law enforcement to get probation for Monell, because he spoke with Mrs. Grant, because he received money for it.

Indeed, the evidence will also show that this was not the only time William Doulin helped out Richard Monell. The evidence will show that Doulin got Monell out of family court jail in 1970, when Monell was in prison for not paying child support money.

Now, as I told you earlier, I have just given you an outline of the Government's proof, not all the details. How will the Government prove all these things? We will prove the underlying facts to show that Doulin's testimony was perjurious by calling many of the very people whose names I have mentioned to you in court in these remarks. The evidence will demonstrate that many of the members of this cast of players have changed their roles since the events you have heard summarized.

Richard Monell's lawyer, Norman Shapiro, is now the district attorney for Orange County, New York. Flo

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York, Richard Monell's girl friend, is now Flo Hall, having since married. Jerome Cohen, the district attorney of Monell's first sentencing, is now a lawyer in private practice. Abraham Weissman, the assistant district attorney who recommended probation, subsequently became district attorney and has since died. Richard Monell no longer lives in Orange County.

You will hear in the course of this trial the testimony of probation officers, judges, and other lawyers, some of whom formerly were with the district attorney's office in Orange County, as well as the testimony of some of the people whose names I have mentioned.

In short, you will hear much about the Orange County district attorney's office, the Orange County court, and, to a certain extent, the political operation of the Republican Party in Orange County, at the head of which is William Doulin, who, the evidence will show, is and has been in a position to assert power and influence in Orange County.

Ladies and gentlemen, the evidence will demonstrate that this case is not simply about a politician doing a favor for a constituent. It is not like a situation where any of you might go to your Congressman or Senator and ask them about a government or social security check

which you had not received.

The evidence here will show that this case involves perjury about a successful effort to prevent a man from going to jail, a man who had committed a violent and vicious crime, that this case involved perjury about a payoff to William Doulin for services rendered in influencing and interfering with the administration of the law in Orange County.

(Continued on next page)

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What is most important, this case is about perjury. The evidence here will show that the solemn oath under which William Doulin testified before the grand jury was violated and disregarded by the defendant; that he did not testify truthfully as it is set forth in the indictment and that he thereby impeded the important function of the grand jury.

Now, ladies and gentlemen, it is obvious that this case is important to all concerned. It is important to the defendant because he is charged with a serious crime. It is important to the government because it involves a crime which strikes at the very heart of our judicial system -- perjury.

Ladies and gentlemen, it is the object of all court proceedings to search for the truth. That search for the truth is meaningless if the oath sworn to by any witness in any proceeding can be flagrantly abused and ignored.

And this case is important to you, ladies and gentlemen. It is important to you because yours is the serious and substantial responsibility to decide the facts at the end of this trial and to decide the guilt or innocence of this defendant.

In order for you to perform that duty properly,

1 you must keep an open mind until you have heard all the
2 evidence, until you have heard the summations of the
3 lawyers and until the case has been entrusted to you for
4 your decision after Judge Ward has instructed you on the
5 law which must govern your deliberations.
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7 The government and the defendant will have
8 an opportunity to address you again after you have heard
9 all the evidence.

10 Bart Schwartz, who is seated here at counsel
11 table will be summing up the evidence as the government
12 sees it at the end of the trial.

13 We ask you to listen carefully to all the
14 evidence as we are sure you will; to judge the witnesses
15 carefully and closely, so that you may ultimately pass
16 upon the credibility of those who testify here.

17 If you do all these things, then you will
18 afford to both sides a fair trial and that is all that
19 the government asks you, to give each side a fair trial
20 as each side is entitled to under our laws.

21 And the government is confident that upon
22 the completion of your deliberations you will return
23 the verdict that the defendant is guilty as charged in
24 the indictment.

25 Thank you very much.

THE COURT: Thank you.

Ladies and gentlemen, we will now hear the opening statement on behalf of Mr. Doulin which will be given by Mr. Platzman.

MR. PLATZMAN: Good afternoon, ladies and gentlemen.

May it please your Honor, Mr. Jossen, Mr. Schartz, ladies and gentlemen of the jury:

During the first few portions of this initial case, I think you have gotten just a little bit, a smattering of the idea of what is going to happen in this lawsuit. It is a criminal lawsuit and a serious one -- serious for all parties concerned and of course particularly this defendant who is charged with something very serious.

Frankly, most of the things that you heard just a few moments ago for the first time are the same things that I heard for the first time -- all the facts as claimed by counsel in connection with this Monell case as outlined to you and the things that he says took place in that Monell case, but one thing we must remember, we are not trying the Monell case in this courtroom. The Monell case was tried and whether he did something nasty or viscous, that is nothing for us to try.

We are here to try one thing -- as to whether

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2 or not Mr. Doulin, when he testified in 1973 and in 1975
3 before these two grand juries, was guilty of perjury and
4 in its real sense and we will get to that as the trial
5 progresses.

6 We will show you that Mr. Doulin was born
7 in Newburgh about seventy-two years ago and his father
8 and mother were also born there and he has been there all
9 his life, spent a lifetime with his parents and it was
10 only natural that he knew a great many people. Newburgh
11 of course is not New York City. There are some twenty-
12 odd thousand people and I would say it appears that he
13 knows the great bulk of them if not all of them.

14 We will show you that during his entire
15 lifetime he has been devoted to public service and he
16 has been in many positions; they will be described.
17 We need not go into them at the present time. Among
18 his many activities he was also active in politics, a
19 calling which has been of course in many instances maligned
20 and in many instances raised to the lofty.

21 Our government, a democracy, by its very
22 nature has to have people in public office and by the
23 nature of it involves political activities by some people.
24 This is not to be held against him.

25 I believe when his Honor was engaged in

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2 selecting you, asking questions, I think all of you
3 indicated that that was not going to be a factor in your
4 determination.

5 Mr. Doulin naturally as chairman of the
6 Republican party during these years was called upon many
7 a time to answer questions, to help, as counsel said,
8 perhaps many of us would go to our local representatives,
9 our local political clubs and ask for information and
10 ask for some minor help.

11 But we will show you unequivocally during
12 the course of this trial that Mr. Doulin is not a fixer.
13 He never influenced the case, he never bribed any officer
14 of a court or of any law enforcement agency. He never
15 paid any money, he never received any money.

16 If he had, he probably would be a wealthy
17 man today and he is not. He lives modestly, within his
18 income and he works. He has a funeral home and he is also
19 on the State Athletic Commission and earns money and he
20 lives within the confines of that.

21 A politician who is crooked, that person
22 goes way beyond that. We will show you that none of
23 these people that were mentioned who were presumably
24 fixed in this Monell case were in fact and this doesn't
25 include Judge Isseks who was the judge, who delivered the

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2 sentence and it doesn't include the District Attorney or
3 everybody else that is being referred to in this case who
4 would have had to have participated with Mr. Doulin to
5 make Mr. Doulin effective.

6 We will show you that when Mr. Doulin came
7 down to the grand jury he came voluntarily. He had
8 nothing to hide. He didn't have any subpoena. He was
9 asked to come down and he came. He answered the questions
10 voluntarily. He didn't come around with a lawyer,
11 didn't come around attempting to split hairs. He was
12 asked questions of a general nature and you will see
13 these questions.

14 He was asked as to whether or not he corrupted
15 any public official, whether he did anything wrong in
16 influencing a case and we are not talking about
17 talking to someone. We are talking about talking to
18 someone for the purpose of doing something wrong.

19 We will show you that at the time that he
20 testified he believed he was telling the truth and he still
21 believes that he was telling the truth. We have had no
22 knowledge of what counsel is claiming about the thin
23 thread of, as he indicates, of somebody telling somebody
24 else that he gave money.

25 Mr. Jossen, I think, indicated to you that

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2 in between the original sentence of Mr. Monell which
3 involved a two and a half year sentence for attempted
4 assault, apparently they accepted that as a plea and we
5 are not here to pass judgment on the plea bargaining
6 that took place between the District Attorney, Mr. Cohen,
7 Mr. Shapiro, who was the attorney for Mr. Monel and
8 who is now a District Attorney and perhaps the judge,
9 Judge Isseks, who passed the judgment.

10 Whatever it was, they accepted his plea
11 of guilty of attempted assault, rather than assault and
12 then he was sentenced.

13 Some period of time, a few weeks went by.
14 I think counsel indicated to you in his opening that
15 at the time of the original sentence Mr. Doulin was on
16 his vacation in Florida and couldn't be reached but that
17 thereafter in between the sentence and the period, the
18 date when there was a resentencing of Mr. Monell and
19 I might add at this time and I don't know whether Mr.
20 Jossen indicated this to you and I don't quite recall
21 but the reason for the resentence was that the initial
22 sentence was defective.

23 Apparently Judge Isseks made a mistake under
24 an existing law and he had no right, had no right, no
25 power, to sentence this man to that kind of a sentence of

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2 two and a half years. So he had to call him back.

3 Mr. Jossen indicates that in between that
4 time, Mr. Doulin was now back again and was able to
5 carry out that bargain of fixing the Court and the
6 District Attorney and as a result of which now he was
7 given a probation, put on probation, rather than the
8 two and a half or some other kind of sentence which the
9 judge might have imposed.

10 We will show you that that is not true.
11 Now, I don't know who this Flo woman is and I don't know
12 what she has to do with it but we will find out and we
13 will all find out together but we will show you that
14 what Mr. Jossen says he is going to prove to you is not
15 correct, that Mr. Doulin did not in the interim return
16 and take care of this thing which he had not taken care
17 of before.

18 We will ask you to consider, which is perhaps
19 the most important thing in this case, and that is as
20 to whether or not at the time Mr. Doulin was testifying
21 on both of these occasions that he believed that he was
22 testifying falsely. It is an intentional misstatement --
23 not a slip of the tongue, not a misinterpretation of what
24 is meant; not what the U.S. Attorney is driving at but
25 more important than that, that he knew when he was saying

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2 what he was saying that he was lying and if you believe
3 that he was, then you have to reach one other conclusion --
4 that is a corrupt -- not just a liar, that is unimportant,
5 because you are really in effect convicting him of being
6 a fixer, corrupting justice and bribing judges and district
7 attorneys.

8 If you arrive at that conclusion then you
9 perhaps can arrive legitimately at the conclusion that
10 he was lying before the grand jury when he knew that he
11 had done something to corrupt and influence a case.

12 Now, the questions that were asked of him
13 have been just generally outlined by Mr. Jossen and I
14 agree those were the kind of questions and that is whether
15 he had offered money to anybody, whether he had received
16 any money from anyone, all for the purpose of fixing
17 cases and we will show you that the answers that Mr.
18 Doulin gave were honest answers. He never did things
19 like that.

20 We will, in addition, perhaps bring before
21 you people who have known him through his lifetime, through
22 his business associations, through his political life.
23 People who would not come in here and perjure themselves,
24 lie for anyone, who will indicate the kind of a man Mr.
25 Doulin was, who had devoted himself to public service,

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2 doing dozens of things throughout his lifetime and career
3 that cost him money because he was a good soul and this
4 has happened many a time including people coming to him
5 for funerals who never did pay him and he still helped
6 and benefited many people in the community.

7 This is why Mr. Doulin is not the rich
8 man he should have been perhaps if he were a corrupt
9 public official.

10 Now, what is most significant because if
11 this perjury is correct, then Mr. Doulin was guilty of
12 fixing, which is a crime in and of itself, but he has
13 never been charged with those things and we will show
14 that as of today, he has never been charged nor have
15 any of the other people with whom he would have had this
16 kind of association, they weren't either.

17 We say that perhaps, and we can't tell at
18 this point, that we are involved in a situation of splitting
19 of hairs, of a very sharp and generalized meaning of
20 words that holds no place in a court of justice.

21 I think counsel in his comments, his opening
22 to you mentioned the fact that when Mr. Monell was brought
23 back a second time because of the error in the first
24 sentence, Mr. Jossen very dramatically stood here before
25 you and said something very unusual happened. The

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2 district attorney got up and said he has received letters
3 from many people and telephone calls that there should
4 be leniency for this man.

5 We will show you that not only is that not
6 usual but the most usual thing that ever does happen
7 when a man comes up for sentence; that people have the
8 right to ask to be lenient with a man standing before
9 the Bar for sentence; that that is not unusual, that
10 district attorneys, probation officers and judges all
11 get letters, telephone calls from people in the community,
12 friends.

13 Of course, I don't know, he didn't say that
14 Mr. Doulin did this or Mr. Doulin was one that sent in
15 a letter or telephoned but even if he had, it wouldn't
16 have meant anything. It is perfectly proper; nothing
17 wrong in it.

18 And his characterization that when this
19 district attorney stood up and said he had had this, that
20 this was a very unusual thing, judges change their minds
21 every single judge that is on this bench in our great
22 state is a human being and he is no different than anyone
23 else, except he has a different calling, different skills,
24 different responsibilities but he, too, does the very
25 things that all of us do, change our minds, perhaps.

1 jbjw 12

2 So do district attorneys. They too do. They have to
3 exercise discretion, too.

4 Whatever happened that day was not corruptly
5 influenced by Mr. Doulin and this we urge is what we
6 are going to ask you to conclude when this case is
7 over.

8 We will show you that he did not do anything
9 to intercede and to corruptly influence what happened
10 on that Monell case.

11 One major thing that I think is to permeate
12 this whole trial: There is going to be a lot of trees,
13 a lot of things that we are going to spot that are going
14 to build up this forest and we are going to get pieces
15 of evidence. It is going to be your job to tie it all
16 in and it boils down to the one thing that perhaps both
17 Mr. Jossen and myself do agree and that is essentially
18 did Mr. Doulin believe that he was telling a lie when
19 he sat on that witness stand on two separate occasions,
20 once in 1973 and once in 1975, when he told that grand
21 jury and the U.S. Attorney that he didn't fix any Monell
22 case and that is going to be really the crux of this
23 entire trial.

24 All the parties, all the participants
25 thus far, his Honor, counsel, have asked, and I join in

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2 this request -- what the lawyers have said is not
3 evidence. What is going to appear from the witness
4 stand and the documents, that is going to be evidence.
5 We ask you to keep your minds open throughout this entire
6 trial. Don't come to any conclusions until you have
7 heard all of the evidence and we will ask when that evidence
8 has been completed for you to reach the same conclusion
9 that I have with respect to this man -- he told the
10 truth to the best of his ability.

11 Maybe he is not a Philadelphia lawyer but he
12 gave you the answer in the way that he gave the grand
13 juries the answers in the way that he thought that he
14 did and underlying that was that he knew that he had
15 never influenced any case, corrupted any Court or paid
16 or asked for any money and we will ask you to join in
17 that conclusion.

18 Thank you.

19 THE COURT: Thank you, Mr. Platzman.

20 Ladies and gentlemen, you have heard the
21 opening statements of counsel. We shall now proceed
22 with the presentation of evidence.

23 Mr. Jossen.

24 MR. JOSSEN: Your Honor, the government
25 calls Angelo Ingrassia.

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2 A N G E L O I N G R A S S I A , called
3 as a witness by the Government, being first duly
4 sworn, testified as follows:

5 MR. JOSSEN: May I inquire, your Honor?

6 THE COURT: You may.

7 DIRECT EXAMINATION

8 BY MR. JOSSEN:

9 Q Mr. Ingrassia, please keep your voice up so
10 that all in the court may hear you.

11 A I'll try.

12 Q How are you employed, sir?

13 A I am a Judge of the County Court of Orange
14 County, New York.

15 Q How long have you been a judge?

16 A Since early in February 1971.

17 Q Mr. Ingrassia, prior to the time that you
18 became a County Court Judge, how were you employed?

19 A I was District Attorney of Orange County
20 part-time and I was also engaged in the general practice
21 of law in Middletown, New York.

22 Q Could you explain for us, sir, what you
23 mean by part-time?

24 A Well, prior to -- in 1970, any district
25 attorney in this state elected after November 1970, if

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2 it was a county over 100,000, would have to be full-time.

3 Prior to that time, they were not full-time
4 positions but the person who was district attorney could
5 practice law but not criminal cases of any type.

6 Q Now, Mr. Ingrassia, how long did you serve
7 as district attorney?

8 A I was elected district attorney in November
9 of 1966 so I served from January 1, '67 until I was
10 appointed to the County Court of Orange County.

11 Q Prior to the time that you became the
12 district attorney, how were you employed?

13 A I have served as an assistant district
14 attorney. I was appointed an assistant district attorney
15 on January 1st, 1952 and I served until I was elected,
16 from 1958 through 1966, I was chief assistant.

17 Q Mr. Ingrassia, during the time that you
18 served as district attorney, would you tell us the name
19 of your chief assistant district attorney?

20 A Jerome Cohen.

21 Q Would you tell us what was the practice of
22 your office during the time that you were the district
23 attorney with respect to maintaining documents and
24 record concerning cases which were then being prosecuted?

25 A The full procedure?

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2 Q Please sir.

3 A All right.

4 If a defendant were charged with a felony
5 anyplace in the county, he would be charged in one of
6 the lower courts, the Magistrate's Court, a Justice of
7 the Peace, or a City Court. He would be charged by way
8 of an information and there, either after a hearing,
9 he would be entitled to an examination and he would
10 either have a hearing or waive that examination. If he
11 waived he would be held for the action of the grand jury
12 or if he had a hearing, the judge could dismiss it or
13 hold him for the action of the grand jury.

14 When the judge did that or the man waived
15 or he held him, a copy, the original papers, would
16 be filed in the County Clerk's office but a copy of that
17 document holding him would be forwarded to the office
18 of the district attorney.

19 That would be logged into a ledger book, a
20 large bound permanent type ledger book and it would
21 receive a number.

22 Then, it would remain in that order, that
23 case, and basically in the order in which they were
24 received, there might be variations but they would be
25 presented to the grand jury.

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Ingrassia - direct

Now, when they were presented to the grand jury, the grand jury would either return an indictment or not indict him which would be a no bill.

Whatever that finding would be, it would be logged in that big permanent register; either that he was indicted or not indicted. If he was not indicted that would terminate the recordkeeping with reference to that particular case and that file would be filed with the dead files.

If it were indicted, the file would then go into the active files and we kept a large three-ring book, books, probably about fifteen or twenty of them there now, but in that three-ring book, the indictments would be listed in numerical order. In other words, if this were Indictment No. 1 of 1975, No. 2, '75, 3, '75, right on through until that book was filled up. It might take four or five years and there in that book then would be all the filing procedures, when the defendant was arraigned, what the disposition was, what sentence was received.

The file itself would be placed in the active files and at least for the last fifteen years, I would say, that I was in the office, the file would be a folder with printing on the outside of the folder which would

1 show the date the case was received, the charge, whether
2 there was bail, when it was presented to the grand
3 jury, the finding, when he was arraigned, if there was
4 a trial, the disposition right on down including motions.
5

6 Basically that was the system.

7 Q Mr. Ingrassia, you described for us a
8 filing system and maintenance of a file.

9 Would you tell us what type of documents
10 would be placed into that file?

11 A Everything we had. In other words, it normally
12 any bail instruments, if there were copies of the
13 information from the lower court that would be in there,
14 any police reports that we had. The indictment would
15 be in it, a copy of it. The original indictment would
16 be filed but copies of the indictment would be in it; any
17 statements that a defendant may have made, any witness'
18 statements that there might be.

19 Many times notes made by any particular
20 individual who happened to be handling that file, notations,
21 notes, it could - should contain everything pertaining
22 to the case other than physical evidence and if it
23 were for a case involving say drugs, firearms or stolen
24 property, of course, stolen property would be kept in a
25 separate spot but there should be in the file some

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2 notation as to where the physical evidence would be
3 located.

4 Q Mr. Ingrassia, other than yourself and Mr.
5 Cohen, were there any other lawyers in the district
6 attorney's office?

7 A At what time? At what period of time.

8 Q During the period of time that you served.

9 A All right.

10 When I was first appointed as a district
11 attorney, there was the district attorney and two
12 assistants who were lawyers. There were two more,
13 assistants there at a later period and when I was
14 elected district attorney, the office consisted of
15 six assistants and the district attorney. And my last
16 year in 1970 of January 1, 1970, I had two additional
17 assistants which made eight. They were all part-time
18 and were allowed to practice law, other than criminal
19 law in addition to their duties in the district attorney's
20 office.

1
2 Q Mr. Ingrassia, would you describe for us the
3 operation of the district attorney's office during the
4 time you were district attorney, with respect to assignment
5 of cases to the individual assistants?

6 A As I said, it was a part-time office. I, being
7 the district attorney -- I would be there every day for at
8 least a good portion of the day.

9 Some of the assistants -- none of the assistants
10 were there every day, but they had certain duties. On
11 two days a week, usually Wednesday or Thursday, or occasion-
12 ally a Tuesday and a Wednesday, sometimes just on a
13 Wednesday, the grand jury would meet. The cases that had
14 to be presented to the grand jury were presented by all
15 of the assistants, not every day, but they would take turns.

16 One week, two of them would present; one might
17 present in the morning, the other in the afternoon. Or
18 for two days, one would take one day and the other another
19 day.

20 Now, of necessity, approximately a week prior to
21 that time, they would prepare their cases for the grand
22 jury, make sure their witnesses were available, subpoena
23 them, and be ready to present them.

24 As I say, those cases should have been, and they
25 were basically -- everything wasn't always done exactly.

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Ingrassia-direct

they might be taken out of order sometimes, but basically the cases were presented in the order in which they had been received.

After the grand jury voted on the cases, every two or three weeks the grand jury would file its findings or hading up. The indictments, by and large, were drawn by me. I saw the indictments, prepared them for the signature of the foreman.

After indictments were filed, usually every two or three days a month, those defendants who were indicted would be arraigned on the indictments, that is, brought into court and plead guilty or not guilty. Invariably it would be a not guilty plea at that stage. They would be given a certain period of time for motions, and our practice then, and still is, for that matter, after a defendant had entered a plea of not guilty, the case would be placed on the trial calendar even though the motion time might not have expired.

We prepared one trial calendar at the beginning of each month. It was probably prepared in the last ten days. For example, the December calendar would be prepared maybe by the 20th or 21st of November. That would list all the cases where defendants had been arraigned and entered a plea of not guilty, and were awaiting trial, and

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Ingrassia-direct

2 the defendants who were in jail would automatically be
3 placed at the top of the calendar, and the bail cases
4 then would be in, I guess you call it, chronological
5 order by the age of the indictment, following the jail
6 cases.

7 We only had one county judge, who didn't hold
8 a term every month at that time, so we had maybe seven or
9 eight months during the year where criminal terms were
10 held. So, at the beginning of the term, say a week
11 before, I would sit down with three or four or two or three
12 of the assistants who were going to handle the trials that
13 month. We would go down the calendar. I would discuss
14 with them as to what plea -- the lowest plea we would
15 accept in any case, regardless of what the charge was.
16 Then they would take four or five cases apiece, prepare
17 them for trial, and in that manner, that's the way the
18 calendar moves.

19 So you can see it might be possible a bail case
20 would remain on the calendar for quite a period of time
21 while newer cases would be tried. Jail cases, every
22 effort was made to dispose of the people who were in jail
23 or incarcerated before the bail cases.

24 Q Judge Ingrassia, in your last answer, you just
25 referred to the lowest plea you would accept in a particular

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Ingrassia-direct

2 case.

3 Would you explain to the jury what you meant by
4 that?

5 A Said simply, to use the phrase, in our county,
6 and I am certain in all counties in this state and most
7 states, the vast majority of criminal cases are disposed
8 of by plea, by a person pleading guilty, and as a result of
9 plea negotiations or plea bargaining. I would say in
10 our county during my entire time in the district attorney's
11 office and during the last five years that I have been
12 on the bench, I would say that probably 90 percent of
13 all indictments are disposed of by plea bargaining or plea
14 negotiation. Maybe 5 percent or 8 percent of them are tried.

15 Now, of necessity, in order to engage in plea
16 negotiations or bargaining, somewhere, sometime, someone
17 has to sit down and go through that file and you decide
18 in your own mind what the lowest plea that will be accepted
19 is.

20 A person might be charged, for example, with
21 burglary in the first degree. There are many lesser
22 included charges. You would have burglary in the second
23 degree, you would have burglary in the third degree, you
24 would have attempted burglary in the third degree, you
25 would have attempted burglary in the second degree,

2 attempted burglary in the first degree.

3 There are larceny charges which are normally
4 included in that type of indictment.

5 So you could run the full scale where you might
6 have a crime -- in one indictment you might be able to
7 dispose of it with a plea which might range from a crime
8 that could be punishable by up to 25 years to down to
9 a crime that could be punishable by one year.

10 That is what is called plea bargaining.

11 Q Judge Ingrassia, you described for us a few
12 minutes ago your practice of assigning cases to assistants
13 for trial.

14 What was your practice for assigning cases for
15 sentencing?

16 A Well, basically I would say that there was no
17 set practice. If we had a sentence calendar up, say, for
18 next week, say on the 12th of November, if I were available
19 I might handle it, or if I knew I would be unavailable and
20 Mr. Cohen might be engaged in a trial or someplace else,
21 I might ask Mr. Mauriello. I would say, "You are going to
22 handle sentencing this day."

23 Many times a person would not know he was
24 going to handle a sentence calendar until the day before.
25 But someone normally handled it. It wasn't necessarily --

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in fact, it very rarely was the person who took the plea
or who may even have tried the case that handled the
sentencing. It's possible it could have been. It's also
possible it could have been someone else.

Q Now, sir, I direct your attention to September
1968.

At that time was your office undertaking the
prosecution of a case against a defendant by the name of
Richard Monell?

A Yes, they were.

I base that, of course, on the fact that I have
seen the file.

Q Judge Ingrassia, I show you what has previously
been marked as Government's Exhibit 1 for identification
and ask if you can identify that for us.

A Yes, I can, at least the outside. I haven't
looked inside of it at this point, but the outside of
this file is the outside. older or file in the case of --
this indictment number 88 of '68, which is the case,
People v. Richard Monell, and this is the file and folder
and type of notation that I mentioned in my answer here.

Q Judge Ingrassia, I show you what has been previously
marked as Government's Exhibit 1-D for identification,
removed from Government's Exhibit 1, and ask you if you can

1 identify that for us.

2
3 A Yes, I can. That's a Thermofax copy of the
4 indictment in this case with a copy of my signature.

5 Q The indictment in which case is that?

6 A The case of Richard D. Monell, Indictment 88 of
7 '68.

8 MR. JOSSEN: At this time the Government offers
9 Exhibit 1 in evidence.

10 THE COURT: That's the file jacket. That's what
11 you are offering?

12 MR. JOSSEN: Your Honor, at this time the Govern-
13 ment is going to offer the entire file.

14 MR. PLATZMAN: I will object to the introduction
15 in evidence of the entire file. We are not trying the
16 Monell case. It is incompetent, irrelevant and immaterial
17 to the issues in this case.

18 THE COURT: Do you have an objection as to the
19 authenticity?

20 MR. PLATZMAN: No, your Honor.

21 Without looking at it, I will accept counsel's
22 statement it is the authentic file.

23 THE COURT: I suggest either counsel make a
24 representation to the Court or we have Judge Ingrassia
25 look through it to see if this would appear to be the entire

file.

MR. JOSSEN: Fine, your Honor.

Q Mr. Ingrassia, I will ask you to examine Government's Exhibit 1.

A Let me say this. Before I even examine it, I think I will be able to tell you what the items consist of of the file, but I certainly wouldn't remember if it was everything that was in this file in 1968.

THE COURT: At least what you are taking out you will be able to --

THE WITNESS: Whether it appears to belong in that file.

THE COURT: Very well.

(Pause)

A It would appear to me that everything in this file that I have seen is connected with this case, and were items which should be in this file.

THE COURT: And I gather those are items that were recorded in the district attorney's office, a public office?

THE WITNESS: Yes, and they were kept in the regular course of our business in that office at that time.

THE COURT: And the entire file appears to come from the district attorney's office of Orange County; is

that correct?

THE WITNESS: That's correct, your Honor.

MR. JOSSEN: The Government offers it in evidence.

THE COURT: I have noted counsel's objection of relevance and materiality. I think the authenticity has been testified to by the witness.

On the grounds of irrelevance and immateriality, the objection is overruled.

MR. PLATZMAN: Exception.

(Government's Exhibit No. 1 was received in evidence.)

Q Mr. Ingrassia, with respect to the People v. Monell, did you at any time, while you were district attorney, set a policy with respect to what plea could be accepted in the Monell case if the defendant were to plead guilty?

A Yes, I did.

In that case, it was my instruction that nothing less than a felony plea would be accepted.

Q Did you communicate that instruction to anyone?

A Yes. I communicated it to the assistant, the various assistants, that handled the case, and I believe there were three or four of them that did handle it over that period of time, and I also conveyed that information

2 to the attorney who represented Mr. Monell, Mr. Norman
3 Shapiro.

4 Q Mr. Ingrassia, in connection with a case where
5 a defendant agrees to plead guilty to part or all of an
6 indictment, does your office ever make any promises with
7 respect to the acceptance of a guilty plea?

8 A By that do you mean did we make any commitment
9 to the defendant or his attorney as to what recommendations
10 we would make upon sentence?

11 Q Yes, that is my question.

12 A On occasions we did. Not very often, but there
13 were occasions when we did.

14 Q In a case where such commitment was made, was
15 anything done physically in connection with records main-
16 tained by your office?

17 MR. PLATZMAN: May it please the Court, I object
18 to the continued extension of this line of examination.
19 We have gotten policy, and I think what might have
20 been done in other cases is no longer material. We are
21 discussing the Monell case, what happened in that one.

22 He is far afield now as to what might have
23 happened in some other case.

24 MR. JOSSEN: The policy that was followed in the
25 district attorney's office at that time is certainly

relevant to the Monell case and what happened there.

THE COURT: I will allow it.

Q Do you recall the question?

A Yes, I do.

If I might restate it, if any commitment were made, what was the policy with respect to that.

To tell you what should have been done, my assistants were under instructions that if any of them did make a commitment at the time a plea was taken, a commitment to the effect they would make a recommendation one way or another, there should be a notation of that made in the file so that the next person who has that file, or he himself, would remember at the time of sentence and would know of it.

Q Was there any particular place in the file where such a notation would be made?

A Yes. I believe most of us put it -- if we did have it, they were told to put it on the inside flat of the file where it would be readily visible when someone opened the file up, and it would not be visible if the file were laying around.

Q Judge Ingrassia, I show you Government's Exhibit 1 in evidence, and ask you to examine the outside and inside flap of the file and tell us whether there is any such

notation on the file?

A No, there is not.

Q Judge Ingrassia, you just have had an opportunity to examine the contents of Government's Exhibit 1.

In the course of going through the documents contained in this exhibit, did you find any note with respect to any sentencing commitment?

A No, there were none in that file.

Q Now, Judge Ingrassia, in connection with the Monell case, did there come a time when a plea of guilty was entered to less than the entire indictment?

A Yes, there was.

Q Do you know which assistant district attorney agreed to take that plea?

A You mean who actually negotiated the plea?

Q Yes.

A It is difficult to say because probably I had communicated at some point over the previous year to Mr. Shapiro what plea would be acceptable. I know there were several assistants handled that file, and I would assume they would all have communicated the same.

I know the one who handled it at the time the plea was taken, because his name appears in the file. It was Mr. Kopald, or the time the plea was scheduled to be taken.

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2 Q Judge Ingrassia, in connection with Mr. Monell's
3 plea of guilty and in connection with the entire case,
4 to your knowledge, was any commitment ever made with
5 respect to the particular sentence which the district
6 attorney's office would recommend in that case?

7 A Absolutely not by me, and not that I know of by
8 any assistant of mine, and if they did, it was unauthorized.

9 Q Did you, sir, have any conversation with an
10 attorney representing Mr. Monell with respect to the
11 sentencing recommendation which the district attorney's
12 office would make?

13 A I had conversations with the attorney who
14 represented Mr. Monell over that period of time on many
15 occasions, because he was the chief attorney for the Legal
16 Aid Society, he represented many defendants, and I know
17 I told him, probably in the year prior to this plea, what
18 plea we would take on many occasions, but I never
19 indicated to him that the office of the district attorney
20 would take any position on that sentence, and if any one
21 of my assistants did, it was unauthorized.

22 Q Judge Ingrassia, I direct your attention to
23 March 1971.

24 At any time during that month did you have a
25 conversation with anyone about Richard Monell's case?

2 A Yes, I did.

3 Q Would you tell us the substance of that conver-
4 sation?

5 MR. PLATZMAN: May we have an identification of
6 the person with whom this conversation was had?

7 THE COURT: Yes. I think we ought to zero in,
8 to the extent the witness is able to recall it, when,
9 where, who was present, and then we can get to the substance.

10 MR. JOSSEN: Fine, your Honor.

11 Q Judge Ingrassia, would you tell us the circum-
12 stances under which you had this conversation?

13 A It was on a Saturday and I have since ascertained
14 it had to be the Saturday after the date the Monell was
15 sentenced. My wife advised me that some hysterical woman
16 had phoned me and said it was important --

17 MR. PLATZMAN: If it please the Court, may we
18 refrain from any conversation at this point until we have
19 a proper foundation?

20 THE COURT: Let's take it one step at a time.

21 You had a conversation with your wife, and as a
22 result of that conversation, did you do something?

23 THE WITNESS: I did nothing.

24 THE COURT: Very well.

25 Q Following your conversation with your wife, did

1 something happen?

2 A Yes.

3 Q Tell us what happened?

4 A About an hour later, I received a phone call.

5 Q Did the caller identify himself or herself?

6 A It was not himself. It was a woman.

7 She did -- my recollection at this time of five
8 years ago, approximately, is she was hysterical. She
9 said --

10 MR. PLATZMAN: May it please the Court, before we
11 get to the conversation, if we are going to go into the
12 conversation now, I am going to object.

13 There is an improper foundation against this
14 defendant.

15 THE COURT: We haven't identified the caller.
16 I think that is the nature of your objection.

17 MR. PLATZMAN: Yes, your Honor.

18 THE COURT: Can you identify the person who
19 called?

20 THE WITNESS: It's difficult to say. I think
21 at the end of the conversation you would know who it is.
22 I wouldn't recognize her voice. I didn't know the person
23 who called, and I wouldn't know that person's voice at this
24 time if I heard it.
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I do know and recall very vividly what she said and the manner in which she said it.

THE COURT: I would suggest unless Judge Ingrassia is able to identify the caller, I will have to exclude the conversation.

Q During the course of the conversation, did the caller identify herself?

A By name?

Q Yes.

A If she did, I don't recall the name at this point. My recollection is that she did not.

Q Did she identify herself in any manner?

A Yes, she did.

Q Would you tell us how she identified herself?

MR. PLATZMAN: This witness hasn't identified her and that is an improper foundation, not binding on this defendant.

THE COURT: I will overrule the objection. We are not getting into the conversation. I am not allowing that yet.

I want to see if we can establish who this person was. The conversation will not go in until there is a proper identification. Let's see if we can find out who she was.

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MR. JOSSEN: I believe there is a pending question.

THE WITNESS: You had better give it back to me.

THE COURT: Mr. Reporter, if you would, please.

(Record read)

A She said to me, and this is my recollection now --

THE WITNESS: Judge, it is difficult for me to start off because I can remember clear as a bell the first words she said to me.

THE COURT: It was an incoming call?

THE WITNESS: Yes, it was.

THE COURT: Made to your home?

THE WITNESS: It was.

(Continued on next page)

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Q Judge Ingrassia, can you tell us the manner in which this woman identified herself during the conversation?

A Yes, I can.

Q Would you tell us that, please?

A She said --

MR. PLATZMAN: Your Honor --

THE COURT: Just her identification; not the substance of the conversation. Let's hear how she identified herself.

THE WITNESS: Judge, let me say this before I say anything.

These, what I say, isn't the first words, are not the first words she said to me but during that conversation she said, my recollection is now that she said "My grandson", she may have said "my son" but at this time I recall it as "my grandson" and said "he shouldn't have gone to jail".

MR. PLATZMAN: Now, of course I renew the objection and I particularly, since this witness did not make the call, initiate the call to some party which might give greater credence to its authenticity but it is an incoming call and I don't believe there is a proper foundation laid for that.

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Ingrassia - direct

2 MR. JOSSEN: May we approach the bench?

3 THE COURT: Yes, and I think this might be
4 a good opportunity, since I note the time, for the jury
5 to take a ten minute mid-afternoon recess.

6 Ladies and gentlemen, we will take a ten
7 minute recess and that will give you a chance to stretch
8 and refresh yourselves. Miss Kreuger will show you
9 again where to go.

10 The witness may step down if he wishes.

11 (The jury left the courtroom)

12 MR. JOSSEN: Your Honor, may I make an offer
13 of proof at this time, that the witness will state that
14 in the substance of the conversation, the woman had
15 identified herself as referring to her grandson, her son
16 and then the name Monell was also mentioned in the
17 context of that phone conversation.

18 Now, in addition, the government will show
19 through other evidence elicited from other witnesses,
20 circumstantial facts which will certainly prove that the
21 call was made by the grandmother of the defendant in the
22 Monell case, Mr. Monell.

23 THE COURT: Well, is it the government's
24 intention to call the grandmother because, if so, and
25 she were to testify that she called Mr. Ingrassia, I

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2 would promptly admit the call subject to connection and
3 should you produce the caller, it would seem to me,
4 counsel, you would have no further objection.

5 Let's start with that.

6 MR. JOSSEN: Your Honor, at this time Mrs.
7 Grant is under subpoena.

8 THE COURT: That does not mean to me that
9 she is definitely going to testify that she had this
10 conversation but I am still inclined at this point, and
11 I will hear from counsel, to consider seriously admitting
12 the conversation subject to connection.

13 However, I will certainly hear you.

14 MR. PLATZMAN: May it please the Court,
15 I do object at this point because there has been no
16 identification and even under the exceptions to the
17 hearsay rule that may exist at this court at this time
18 there is no guarantee of authenticity of this conver-
19 sation or the identity of the caller.

20 H: Judge Ingrassia made the call there
21 might have been a basis. This was an incoming call.
22 He didn't know the party, as he testified, and there is
23 no means by which one can say anything that would identify
24 this individual.

25 If there was testimony, and I am not saying

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2 that I would, I would not object to the testimony at all,
3 if there was some testimony concerning -- outside testimony
4 concerning the identification of this witness, this caller.

5 Then I would say that it would not be objection-
6 able on that ground. I might have other objections in
7 the conversation between Mrs. Grant and Judge Ingrassia,
8 there might be another basis for objections.

9 I don't know whether Mrs. Grant is going to
10 be here and therefore, getting in only part of the story
11 might be very harmful and I do object to it at this
12 time.

13 MR. JOSSEN: With respect to this conversation,
14 might I state first with respect to the hearsay objection
15 counsel is raising --

16 THE COURT: I do not think he is really
17 raising that. He is raising the fact that you have not
18 authenticated the caller.

19 MR. JOSSEN: The government submits that
20 the surrounding circumstances, the statements in the
21 phone conversation together with other evidence the
22 government will elicit will establish circumstantially
23 that the call was in fact made by Mrs. Grant.

24 MR. PLATZMAN: Does counsel know if Mrs.
25 Grant is going to be here and if so, why don't we wait

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2 until she comes in.

3 THE COURT: Let me have an offer of proof of
4 whatever else you expect to elicit in this conversation.

5 The jury has heard, "My grandson, he shouldn't
6 have gone to jail."

7 Let's hear what the rest of the conversation
8 would be.

9 MR. JOSSEN: The rest of the conversation
10 will be that the caller used abusive language, said words
11 to the effect that "You son of a bitch, you sent my
12 grandson to jail, he shouldn't have gone to jail;"
13 that Judge Ingrassia said "Who are you talking about,"
14 and she said "Monell, Richard Monell," and then Judge
15 Ingrassia stated to the caller, "I am not the district
16 attorney," and that is in effect the substance of the
17 conversation.

18 MR. PLATZMAN: I don't know how that would
19 be binding on the defendant in any event, what relation-
20 ship that would have to these issues.

21 MR. JOSSEN: That is of course, your Honor,
22 a different question.

23 MR. PLATZMAN: Well, I would like to know
24 in any event if there is an assertion that this has a
25 relationship. I would like to certainly be apprised of

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2 what that relationship should be. I don't think counsel
3 should have carte blanche to introduce evidence subject
4 to connection.

5 I would like to know if there will be an
6 attempt at connection.

7 MR. JOSSEN: That is a point I discussed
8 earlier in which I made reference to the government's
9 memorandum of law, that this was in fact a declaration
10 of a co-conspirator or a joint venturer in furtherance
11 of that joint venture or conspiracy and therefore under
12 well recognized principles of law in this circuit is
13 admissible against the defendant who was also a participant
14 as the government claims.

15 MR. PLATZMAN: I don't know of anything in
16 this case that can label Mrs. Grant as a co-conspirator.
17 She hasn't been named. I don't think there are any
18 facts that have been alleged to support this and I
19 don't know whether counsel even claims that he is
20 going to prove that there was a conspiracy between these
21 parties and certainly now to give the result of this
22 conspiracy without even proving it to start with or
23 indicating that he will prove it and by what facts he
24 intends to prove it I say that the evidence is at this
25 point objectionable.

1 jbg 7

2 MR. JOSSEN: The cases also stand for the
3 well recognized proposition that the government is entitled
4 to put in such proof subject to connection.

5 THE COURT: Yes, yes, yes; that is why I
6 asked you about whether you could represent to me that
7 you are going to connect it up by calling the woman
8 and the best you can do is to tell me that she is under
9 subpoena.

10 If she comes in and has cooperated with
11 you already and has indicated a willingness to testify,
12 say so and I will permit this to go in but if you have
13 some doubts and think she might well claim the Fifth
14 Amendment privilege, I suggest you say that to me because
15 I have to determine whether the "subject to connection"
16 has validity.

17 MR. JOSSEN: The government intends to call
18 Mrs. Grant. We do not know whether she intends to appear.
19 We have received information that she has been ill.

20 MR. PLATZMAN: Illness is not an obstacle
21 one way or another.

22 THE COURT: I would have no hesitance about
23 admitting the statement, were the caller identified.
24 Let's get that clear. I have no hesitance about that.

25 Now, at the moment the witness believes,

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2 "My grandson, he shouldn't have gone to jail," but the
3 caller's name was not given. I would assume that Mr.
4 Money may well have had two grandparents at that time.

5 I have no way of knowing who the caller was
6 and therefore I have a problem. If you can identify her
7 to my satisfaction, you will get her statements in.

8 MR. JOSSEN: Your Honor, we can establish
9 in the course of our case that the only grandparents
10 of Richard Monell alive at the time were Mr. and Mrs.
11 Grant and I remind your Honor that in our offer of proof
12 we stated that there was a reference to Monell, as the
13 Monell case, and then "You sent my grandson to jail."

14 THE COURT: Yes, I recall that.

15 The objection is overruled. The conversation
16 will be received subject to connection. In the event
17 it is not connected up, it will be subject to a motion
18 to strike and I will instruct the jury accordingly.

19 MR. PLATZMAN: Exception.

20 THE COURT: I have it.

21 Is there anyone who wishes the Court at
22 this point to give any instruction to the jury?

23 MR. PLATZMAN: Well, we would ask your Honor
24 to indicate that this is being introduced subject to
25 connection and that if there is no connection, that the

1 jbjw 9

2 jury will hold in mind that they may be asked then to
3 erase it from their mind, if that is possible.

4 I wonder whether if we are through with this,
5 if you Honor will give me five minutes to break.

6 THE COURT: I intended to.

7 MR. PLATZMAN: Five or maybe seven. I have
8 one or two phone calls and because of the fact that
9 I have been thrown into this thing, I want to get rid of
10 something else.

11 THE COURT: Do you have someone else who
12 can make the calls for you?

13 MR. PLATZMAN: No, Judge, unfortunately.
14 It will be very brief. It won't take long.

15 THE COURT: All right.

16 MR. PLATZMAN: Thanks very much.

17 (Jury present)

18 THE COURT: Ladies and gentlemen, I am sure
19 it is on your mind when you are going to leave tonight.
20 I will tell you now:

21 I usually recess at or just shortly before
22 5:00 p.m. We will resume tomorrow morning at 10:00
23 a.m.

24 Our normal schedule is approximately three
25 hours of trial in the morning, one hour for lunch and

1 jbjw 10

2 approximately three hours of trial in the afternoon
3 with one recess of approximately ten minutes in the
4 morning and a second recess of approximately ten minutes
5 in mid-afternoon.

6 That is our general schedule. There may be
7 changes for various reasons because in this court we have
8 what we call an individual assignment system and I am
9 charged with handling several hundred cases and things
10 do come up from time to time which require me to take
11 time from this trial and from you to handle some emergency
12 matters which cannot wait until the evening or the next
13 day.

14 We try to keep them to a minimum but I do
15 hope you understand.

16 We are going to resume now and if you recall,
17 when we had recessed Mr. Jossen was asking Judge Ingrassia
18 about a conversation which he had had with a woman.
19 The woman had called Judge Ingrassia at his home.

20 I have heard argument on the subject of
21 admitting that conversation and I am going to permit the
22 conversation to be received subject to connection. If
23 the government does not connect up this conversation
24 properly before the end of its case, I will strike this
25 conversation from the record and I will direct you to

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2 disregard it but at this time, the conversation is being
3 received subject to connection.

4 BY MR. JOSSEN:

5 Q Now, Judge, would you tell us the substance
6 of the conversation in that phone call you were telling
7 us about?

8 A Yes. I answered the phone and this woman
9 was most abusive. She started off by saying, "You
10 bastard." She said, "My grandson should not have gone to
11 jail; he has been out for three years; he has got a
12 wife, he has a baby, he hasn't done anything wrong; you
13 are no good. He went to jail," and I didn't -- I said,
14 "Lady, I don't know what you are talking about." I
15 didn't know who she was referring to.

16 So, when I asked, I did ask her, at least
17 it is my recollection who she meant, was Monell -- I
18 knew the name. I knew the defendant. I did not know
19 her. I wouldn't know this person's voice if I heard it
20 again. I'd never seen the person but she was most
21 abusive and kept with that line.

22 I said finally, "Why are you calling me".

23 She said, "You are the district attorney."

24 I said, "Lady, I was the district attorney."

25 She was more abusive, told me I was a no good bastard,

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2 that he shouldn't have gone to jail, that -- she repeated
3 that at least four or five times; that he had a wife and
4 a baby.

5 Finally, I hung up on her. I said, "I am
6 not the district attorney," and it is my recollection that
7 I told her "Mr. Cohen is the district attorney" and I
8 hung up on her and that was the conversation.

9 Q Judge Ingrassia, prior to that conversation,
10 did you have any discussions with anyone outside your
11 office in connection with the Monell case other than
12 your conversation with Mr. Shapiro?

13 A While I was district attorney?

14 Q That's correct.

15 A Absolutely not.

16 Well, wait a minute.

17 That case was being prepared for trial. At
18 one point in June of 1968 I spoke to Investigator
19 Thomas Butler of the New York State Police; I was unable
20 to locate a witness, a female witness who was, at one
21 point had been, the defendant's girlfriend, by the name
22 of York.

23 So I spoke to her. I located her in Florida.
24 I spoke to her about the case in June and my recollection
25 is that I spoke to a police chief or a detective in Fort

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2 Lauderdale about the case. In fact, I think my notes
3 reflect it in the file. I saw some of my handwritten
4 notes when I went through the file here, so I did speak
5 to other people, other than people in my office about
6 the case.

7 Q Do you know William Doulin?

8 A Yes, I do.

9 Q Is Mr. Doulin seated in the courtroom today?

10 A He is seated next to Mr. Platzman, the
11 gentleman with the white hair.

12 MR. JOSSEN: May the record reflect that the
13 witness has identified the defendant.

14 Q How long have you known Mr. Doulin?

15 A Known Mr. Doulin since sometime in 1951.

16 Q How was Mr. Doulin employed, if you know?

17 A At the present time he is an undertaker.
18 He is also chairman of the Orange County Republican
19 Committee.

20 Q Would you describe for us on what occasions
21 you have seen Mr. Doulin during the period of time that
22 you have known him?

23 A On what occasions? You mean the type of
24 occasions?

25 Q Yes.

1
2 A By and large, they have been political
3 functions, supporting engagements, social functions of
4 one type or another at someone's home; Mr. Doulin may
5 have been there, I have been there. I have seen him at
6 political dinners, I have seen him at non-political
7 dinners. I have seen him on many occasions when I was
8 district attorney. My office was in Goshen. I would
9 eat lunch in the Orange Inn. Mr. Doulin ate lunch there
10 maybe three or four days a week. I saw him on those
11 occasions.

12 I saw him at Republican Headquarters on many
13 occasions. I have seen him on countless occasions from
14 1952 until the present.

15 Q During the period of time that you had
16 known Mr. Doulin, have you at any time had any conversation
17 with him with respect to your doing a favor for him?

18 A On one occasion that I recall specifically.
19 I have had many conversations but the only time he
20 ever asked me for anything is one occasion.

21 MR. PLATZMAN: May it please the Court.
22 I object to the form of the question -- doing a favor of
23 some kind.

24 THE COURT: Yes. I would suggest that the
25 question has now been asked and answered and I suggest

1 15

Ingrassia - direct

2 that the characterization not be utilized.

3 I am going to let it stand but the jury
4 should disregard the word "favor". He asked something.
5 Let's find out what if anything was asked.

6 MR. JOSSEN: I apologize, your Honor.

7 Q Mr. Ingrassia, would you please tell us the
8 substance of that conversation as you recall it?

9 A Yes. That took place in either 1968
10 or 1969. Mr. Doulin -- I don't recall whether he called
11 me or whether he was in my office at Goshen but he said,
12 he asked me, he wanted a favor done, if I could do it.
13 He said that a friend of his and a person whom I knew,
14 a Mr. Leon Greenberg, had a traffic ticket before a
15 Mr. Mark Roe -- Judge Roe was a town Justice of the
16 Peace in the town of Blooming Grove and he said that
17 Mr. Greenberg was scheduled to go to Hawaii and he
18 wanted an adjournment on the trial of the traffic
19 ticket.

20 And I said certainly; I'll call Judge Roe
21 to see if I can get the adjournment for you. I said
22 why doesn't he call himself.

23 He said I would rather you would.

24 I called Judge Roe, Judge Roe refused to
25 grant the adjournment so I told Mr. Doulin that he wouldn't

1 grant it. That's the substance of that.

2
3 MR. PLATZMAN: At this point I would like
4 to strike the answer as not germane to these issues.
5 It is not within the scope of the charges of the indict-
6 ment and the statements made by counsel as to what this
7 matter would be confined to in this case.

8 MR. JOSSEN: May we approach the side bar?

9 THE COURT: I will hear you.

10 (At the side bar)

11 THE COURT: I will hear you.

12 MR. JOSSEN: Thank you, your Honor.

13 Your Honor, the government submits that the
14 testimony of this witness with respect to the conversation
15 you have just heard is relevant to Count 2 of the
16 indictment.

17 By letter dated November 3, 1975, a copy of
18 which was supplied to your Honor's chambers, we advised
19 Mr. Platzman and I am quoting Paragraph 2, where we
20 advised Mr. Platzman -- "Also with respect to Count 2
21 of the indictment, the government intends to offer into
22 evidence that Mr. Doulin interceded on behalf of Leon
23 Greenberg and others in connection with traffic and
24 speeding tickets."

25 We supplied that and had no response prior

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2 to trial in connection with it.

3 THE COURT: Although I had indicated the
4 other day that, when we had the argument on the pre-
5 trial motions that we would be limiting this case to the
6 Monell case, I must say the government did indicate to
7 counsel their other evidence on Monday and this is now
8 Thursday so that is three days ago.

9 I am inclined at this point to allow it.
10 Had this letter not be brought to my attention, I might
11 have considered striking the testimony but I will hear
12 you, Mr. Platzman.

13 MR. PLATZMAN: I got this, as I indicated
14 early this morning, Tuesday afternoon, Election Day.

15 Aside from the question of time, I think
16 at this late date to broaden the areas of investigation
17 under any one of the counts is not proper, particularly
18 in view of the fact that counsel indicated at the time
19 of the argument of the motions that he was going to be
20 limited and this was repeated several times both by counsel
21 as well as your Honor and your Honor questioned counsel
22 and to make certain that this is true, I think I
23 chimed in as well, "And there is no question that it
24 will be Monell," and I was told yes.

25 And then, furthermore, I don't see how

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2 this bears in any event on the establishment of any fact
3 under Count 2.

4 It doesn't establish it at all. It doesn't
5 establish it at all. I don't think that this would
6 constitute anything, within the meaning of the charges
7 leveled against this defendant, which are that he attempted
8 to corrupt and influence courts or judges or prosecuting
9 officers or government officials, that asking somebody
10 to adjourn a traffic violation constitutes a corruption
11 of justice and that was the tenor of the charge leveled
12 against this defendant in all of its document as well as
13 the opening to the jury.

14 THE COURT: Well, he does say in an answer
15 on page 7 of the indictment, "Never spoke to any judge or
16 district attorneys in anybody's behalf". I have read
17 a sentence which is part of a larger answer.

18 Is that what the government has in mind?

19 MR. JOSSEN: Yes, your Honor. And also the
20 preceding question and answer, actually it is a paragraph
21 in the same answer: Like for instance I have many calls
22 on speeding tickets" and then later on in the same para-
23 graph of the answer it states, "But I have always set
24 a rule. I don't see anybody but I tell them that I might,
25 that I'll see what I can do for them."

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2 Then the next paragraph, "I have never yet
3 approached a DA, an assistant or any judge for anyone."

4 The next page:

5 "Q For any purpose?

6 "A For anything."

7 Your Honor, that certainly is probative of
8 Count 2.

9 MR. PLATZMAN: It is taking it out of context
10 in this sense: That he is being asked question after
11 question as to whether he influenced, which has a bad
12 connotation, or corrupted anybody connected with the
13 judicial system and now this testimony only shows that
14 he asked for an adjournment of a ticket speeding, not
15 that he asked to influence or have it dismissed and
16 that is obviously the context and I think that the
17 vague questions, the cases have held that getting vague
18 or indefinite answers with respect to them are not
19 perjury and I don't believe that this comes within the
20 purview of Count 2.

21 THE COURT: Well, let's take it on two
22 grounds -- number one, I think the matter of it not being
23 included in the government's particulars, you might call
24 them, as the matter was set forth on Thursday in court
25 has been cured by what the government advised you the

1 following Monday.

2
3 Now we come to the matter of the relevance
4 and materiality of this. I can see sufficient to permit
5 this and have argument to the jury on the subject and,
6 therefore, unless you want to speak further I am prepared
7 to rule on the admissibility of this particular evidence.

8 MR. PLATZMAN: Well, no, I have nothing
9 further to add except what I had to say and I don't
10 think that it supports or comes within the purview of
11 Count 2 and that there was nothing to indicate by this
12 witness' response that anyone, including Mr. Doulin
13 intended to influence the determination of the Court in
14 the traffic ticket case and that was really, reading all
15 of the questions as a whole and not just the last one.

16 Taken out of context that is what was intended
17 to be asked of this witness under Count 2.

18 MR. JOSSEN: That might be proper argument
19 for the jury but it certainly does not bear on the
20 relevance of this evidence.

21 What's more, if anyone brought it in, it was
22 the answer of Mr. Doulin in his testimony.

23 THE COURT: I have read the answers and the
24 questions in Count 2, including the full sentence at
25 the end of page 7 "But I have never yet approached a DA,

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2 an assistant or any judge for anyone," and then on the
3 next page, the very next question,

4 "Q For any purpose?

5 "A For anything."

6 And having read Count-2, the objection is
7 overruled.

8 MR. PLATZMAN: All right. Exception.
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Ingrassia-cross

2 (In open court)

3 MR. JOSSEN: No further questions.

4 THE COURT: You may proceed, Mr. Platzman.

5 CROSS-EXAMINATION

6 BY MR. PLATZMAN:

7 Q Judge Ingrassia, you have been a judge of what
8 court?

9 A County court of Orange County.

10 Q And you have been such a judge since when?

11 A February 2nd or 3rd, 1971.

12 Q What kind of cases does the county court handle?

13 A It's a court of general criminal jurisdiction
14 and limited civil jurisdiction. Basically, 95 percent
15 of the work is the trial of criminal cases.

16 Q So that most of the criminal cases in the county
17 are handled in the county court?

18 A I would say all of them.

19 Q Other than very petty crimes, is that right?

20 A Misdemeanors are usually handled in the local
21 criminal courts.

22 Q And in addition, civil cases up to a certain
23 level of dollar amount, is that right, limited jurisdiction?

24 A Civil cases up to \$10,000 monetary jurisdiction,
25 unlimited equity, and jurisdiction involving real property

2 gwmch

Ingrassia-cross

in the county.

Q Are there other county court judges in the county?

A There is one other county court judge.

Q So the county has two county court judges?

A That's correct.

Q Is this pretty much prevalent as the procedure used around the state other than the City of New York?

A Yes. Outside the City of New York, in all counties other than Buffalo and Westchester, the criminal cases are tried in the county court.

Q Mr. Jossen asked you a number of questions on direct examination concerning the Monell file.

As I understand it, you had set a policy on the Monell case, a restriction, that under no circumstances would a plea be accepted other than one for a felony?

A That's correct.

Q This is not uncommon, is it?

A That happened to be a usual case. We had many cases we set the same policy. I would say 80 percent of the cases we insisted on at least a felony plea.

Q In setting these requirements, or a requirement of this sort, by yourself as the district attorney, this is within your discretion, isn't that true?

A Within the discretion of the district attorney

1 3 gwmch Ingrassia-cross

2 and the judge.

3 Q It is within the discretion of the district
4 attorney to recommend?

5 A That's correct.

6 Q And it is not uncommon?

7 A No, it is not.

8 And what we call plea bargaining takes place in
9 every criminal court throughout the country, is that true?

10 A I believe I said that, Mr. Platzman.

11 Q And in doing this, there is no stigma attached
12 to it, is there, Judge?

13 A Not to my way of thinking, or I would be pretty
14 astigmatized over the years.

15 Q That would be true of almost every judge through-
16 out the country?

17 A That's correct.

18 Q And it is done in the interests of justice,
19 for the parties involved, the defendants, as well as the
20 Government?

21 A Let me say this. It is the way the system works.
22 It is the way the system must work. It is the way it is
23 done. Whether it is just or not, I will leave that to
24 other people to determine, but as a practical matter that
25 is the way it is done, that is the way it is handled.

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Ingrassia-cross

2 Q In this case, there was no violation of that
3 restriction that you had set, in other words, that the
4 plea would only be for a felony, nothing below that?

5 A There was a felony plea accepted in that case.

6 Q So there was no violation of any instruction by
7 anybody in your organization?

8 A Not as far as I know.

9 Q The limitation that you put was any plea that
10 would be accepted would be a felony plea?

11 A A felony plea, and there would be no recommendation
12 made by my office. I knew of none.

13 Q And it was a felony plea that was offered
14 and which your office was willing to accept with the consent
15 of the Court?

16 A Certainly. That is what the record reflects.

17 Q You also indicated that occasionally there may
18 be some commitment or something held out to the defendant
19 prior to the time that he offers to plead as to what the
20 sentence might be?

21 A Not exactly as to what the sentence might be,
22 Mr. Platzman, because I, as district attorney -- when I
23 was district attorney, I had no control over that. I would
24 state sometimes to a defendant's attorney that if a plea
25 was accepted I would make such-and-such a recommendation.

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Ingrassia-cross

2 At the present time, when I accept pleas as a
3 judge, on occasions -- on many occasions, I do state that
4 if a plea is accepted that my sentence will be such-and-
5 such and if I can't keep that promise I will let him
6 withdraw his plea.

7 Q So that, in essence, it isn't that you have made
8 any guarantee to the defendant, but merely what you
9 as the district attorney would recommend?

10 A That's correct.

11 Q So, in the final analysis, it is the judge who
12 has to determine whether your recommendation is acceptable?

13 A That's his function entirely.

14 Q And this is made only occasionally?

15 A Pardon?

16 Q This is made only occasionally, isn't it, a
17 recommendation of the district attorney?

18 A Let me say this: When I had the office and when
19 I ran the office, I only made it occasionally. What's
20 done in other counties, I can't say.

21 Q And if any such recommendation were promised
22 prior to a plea by any assistant district attorney, that
23 would have had to had been with your review and pursuant
24 to your direction?

25 A It should have been, yes. Probably. I shouldn't

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Ingrassia-cross

say that. They had discretion and they had latitude to a certain extent.

When we went over -- my instruction to all my assistants would be, "This is what it is, but you are the person that's there. You know what the situation is. You have to evaluate it. You use your good judgment and your good discretion, and I'll back you up on it."

Q In this case, was there a statement on the flap of the file indicating that you were going to recommend anything, take any position with respect to sentencing?

A None that I saw, and I have no recollection of ever approving any such recommendation.

Q And as far as you know, then, nobody had made a promise as to what the district attorney was going to recommend with respect to sentencing?

A That's correct.

Q And had there been, the probabilities are, as brought up by Mr. Jossen, it would have been on the flap?

A It should have been if one had been made.

Q It should have been.

A I will say this: There were probably occasions when a commitment was made or a recommendation was made where an assistant could have neglected to put it on the

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Ingrassia-cross

2 flap. It shouldn't have happened often; they should have
3 put it on the flap.

4 Q In any event, in this case it wasn't on the flap?

5 A There is nothing on the flap.

6 Q And just as important is you don't know of any
7 commitment?

8 A As far as I know, there was absolutely no
9 commitment as to any recommendation made in this case.

10 Q Either by you or one of your assistants?

11 A I know there was none made by me and, as far as
12 I know, there was none made by any of my assistants.

13 Q I gather, too, in the Monell case, as in perhaps
14 many cases, the defendant or his counsel is informed over
15 some period of time that if the Government were to plead
16 guilty to a certain level of offense, it might be accepted
17 and that doesn't necessarily mean that that's an offer
18 at any given time?

19 A I wouldn't put it that way, Mr. Platzman.

20 As I indicated here before, I am certain that
21 in this case, at least for the year prior to the taking
22 of this plea, I am certain that I indicated to Mr. Shapiro
23 that his defendant could plead to a felony, whether I
24 specifically said it would be an E felony, an assault second,
25 or attempted assault, but I am certain and I know I advised

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Ingrassia-cross

2 him he could have a reduced felony plea, and that I told
3 him in no event would I ever accept anything less than a
4 felony in that case --

5 Q Judge Ingrassia --

6 THE COURT: I don't think you finished your
7 answer.

8 A -- for at least a year prior to that time.

9 In this case I have a vivid recollection it was
10 scheduled to go to trial in June of 1970, and I had trouble
11 locating a witness, and I did finally locate a witness,
12 and then, for some reason, I don't recall why, Judge
13 O'Gorman may have been ill, maybe he was assigned to
14 Supreme Court, he was the only judge sitting on this case
15 at that time, maybe he was trying another case, it didn't
16 go to trial in June, and then it was impossible.

In September it didn't go to trial because Judge
18 O'Gorman was assigned to the Supreme Court, and in October
19 and November of that year, Judge Isseks, who had started
20 to try criminal cases at that point, was trying a case that
21 took about five or six weeks.

22 So I know that Mr. Shapiro knew at least a year
23 prior to the taking of this plea that my offer in this case
24 was a felony plea, a reduced felony plea, and that he could
25 plead to it.

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Ingrassia-cross

2 Q Mr. Shapiro was the attorney for this defendant
3 Monell, is that right?

4 A He was one of them. There had been another attorney
5 in the beginning of the case who, for some reason, I don't
6 know why, very early in the case withdrew.

7 Q Mr. Shapiro was counsel to the Legal Aid Society?

8 A Chief attorney of the Legal Aid Society
9 representing indigent defendants. He was assigned.

10 Q He represented many defendants that came before
11 your office for the purpose of prosecution?

12 A I say at that time that Mr. Shapiro, as chief
13 attorney of the Legal Aid Society, represent more than
14 50 percent of the defendants on our criminal calendar.

15 Q So you had occasion to constantly see Mr. Shapiro?

16 A I saw Mr. Shapiro every day or talked to him at
17 least every day during that period of time.

18 Q And during those talks, you discussed many cases,
19 including the Monell case?

20 A You are right.

21 Q What was Monell charged with originally?

22 A Monell?

23 Q Yes, in this case.

24 A My recollection, and I don't recall it from then
25 but I have seen the file since then, was that it was

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Ingrassia-cross

2 assault in the first degree. He was charged with assault
3 in the first degree and assault in the second degree.
4 I believe there three or four counts, all arising out of
5 the same transaction. They charged the same act in a
6 different manner.

7 Q May I show you Government's Exhibit No. 1 and
8 ask you whether that would refresh your recollection?

9 A Assault in the first degree, one count; assault
10 in the second degree, two counts.

11 Q And what was the charge as to which he was ready
12 to plead guilty, and which the district attorney was ready
13 to recommend and accepted?

14 A As far as I know, he was never ready to plead
15 guilty to anything until the day he did plead guilty, and
16 at that time it was attempted assault in the second degree,
which is a Class E felony.

18 Q And that is considerably lower than what he had
19 been charged with?

20 A He was originally charged with a C felony.
21 A C and two D's, assault in the second degree.

22 It was actually the same transaction charged in
23 three different ways.

24 THE COURT: He didn't assault three different
25 people?

1 11 gwmch

Ingrassia-cross

2 THE WITNESS: He committed one act. It is just
3 under the state law the definition that fit all three.
4 There could very well have been a count for assault in the
5 third degree, which would be a misdemeanor. There are
6 lesser included charges of the original charge.

7 Q At the time of the plea, who was the assistant
8 district attorney who handled it?

9 A According to this file, it was Mr. Ned Kopald.

10 Q Mr. Ned Kopald was an assistant district attorney
11 who had been with the office some time; is that right?

12 A Yes. He became an assistant district attorney
13 the year prior to my becoming district attorney. So he
14 had been a district attorney in 1970 for five years.

15 Q And he continued on up until recently?

16 A Until last March sometime.

17 Q As far as you can tell from that file, Mr.
18 Kopald did exactly what was indicated, he did not violate
19 any instructions?

20 A No question about it.

21 Q Is there anything in that file that indicated
22 anybody promised anything to Mr. Monell, whether it came
23 from either an assistant district attorney or Mr. Doulin,
24 Mrs. Grant or anybody else?

25 A Absolutely not.

12 gwmch

Ingrassia-cross

Q After the sentence -- which took place when,
Judge?

A According to this file, he was sentenced on
March 5, 1971, and he was resentenced on March 26, 1971.

Q The sentence on March 5, 1971, as far as you
understand, was an erroneous sentence; isn't that true?

A Well, the sentence as it appears on this file that
he received on March 5, 1971, was a sentence that could
not be imposed for that crime. It was an erroneous
sentence. It was an error, whatever you want to call it.
It was an improper sentence.

Q It was technically illegal, is that correct?

A That's correct, it was a sentence that couldn't
stand. It was a sentence for which he could not be
accepted. The Correction Department would not accept him
with a sentence such as that.

Q So, from a legal point of view and your point of
view as a district attorney, it was a sentence that was
void, and there had to be a resentencing?

A That is correct.

Q It wasn't that somebody came in and said,
"Let's sentence this fellow over again"; that didn't happen,
did it, Judge?

A Let me put it this way: Whether it did, I don't

1 13 gwmch

Ingrassia-cross

2 know. I don't think it did. It didn't have to happen.

3 If he received a sentence that this file indicates,
4 I can tell you what would happen. If the sheriff brought
5 him to Sing Sing, which was the reception center, they
6 would say, "We cannot take you," and send him back again
7 to the county jail, and the sheriff would call up and say,
8 "They wouldn't take him. It is an improper sentence."

9 The Correction Department would not accept him
10 with that sentence.

11 Q So this sentence that took place on March 5th
12 of 1971 was, from your point of view as a lawyer and a
13 district attorney, a void sentence?

14 A It was an improper sentence. I have said that.
15 There is no question about it.

16 Q And he would have to be resentenced, isn't that
17 true?

18 A That's true.

19 Q Had he been sentenced three years, that would
20 have been it, wouldn't it, Judge?

21 A They would have accepted him at the Department of
22 Correction.

23 Q And that would have been a valid sentence?

24 A That's correct.

25 Q And there wouldn't have been any resentencing?

1 A That's correct.

2 Let me say this: There would have been -- if he
3 had received a sentence of three years, sure, it is
4 technically possible to resentence him for some reason,
5 but it would not have been mandated.

6 Q Judge, from your experience on the bench and
7 as a district attorney, assistant district attorney, is it
8 uncommon for public officials, prior to the sentencing of
9 a man, to receive letters or recommendations from all
10 kinds of people in the community?

11 THE COURT: You said "public officials." Did you
12 want to specify?

13 Q The district attorney, the probation department?

14 A Are you asking me is it uncommon for a judge to
15 receive letters from many people?

16 THE COURT: That is what my problem was, Mr.
17 Platzman. Rephrase the question.

18 MR. PLATZMAN: I will withdraw that and rephrase
19 the question.

20 Q In your experience as a district attorney, was it
21 uncommon that when a man was up for sentence to find that
22 frequently there were recommendations by various members
23 of the community, including by correspondence or otherwise,
24 for leniency?

1
2 A Let me put it this way: When I was district
3 attorney, I never received too many of those. Really,
4 I don't really recall a district attorney receiving them.
5 They wouldn't address them to me.

6 However, since I have been a judge, I receive
7 many of them, many of which are valuable, many of which I
8 attach to the probation report. I receive them from many
9 people from all walks of life.

10 But as district attorney I very rarely received
11 recommendations, because sentencing was not my function.

12 Q Did the probation department get letters?

13 A I am sure they did.

14 MR. JOSSEN: I object, your Honor.

15 THE COURT: Do you know?

16 THE WITNESS: I do know. I am sure they did.
17 I used to receive copies of the probation reports.

18 Q You, as district attorney, would have occasion
19 to look at the probation file prior to sentencing?

20 A Not the file -- yes, at that time the district
21 attorney did receive copies of the probation reports.

22 Q And that probation file would frequently have
23 letters of that type?

24 MR. JOSSEN: Objection, your Honor.

25 A Not the file --

MR. JOSSEN: The question referred to file, and the witness said he received the report as district attorney.

THE COURT: I think you might change the question.

Q In any event, there were receipts of letters or other forms of communication which asked for leniency for the man under sentence; is that correct?

MR. JOSSEN: Objection, your Honor. To whom? Form.

THE COURT: I think I know what you are talking about, but it isn't clear from the question.

Q Judge, were there times a man came up for sentence that letters had been received asking for leniency with respect to that man's sentence?

MR. JOSSEN: Objection, your Honor, again as to form.

THE COURT: Yes. He has covered the matter as district attorney. I assume you want to ask him about the probation department.

Do you know, Judge Ingrassia, whether or not the probation department, as a matter of course, would receive letters on behalf of defendants, asking for leniency?

THE WITNESS: Yes, I do, because they would annex those letters to the probation report, and I would normally

see the report or a copy.

Q Was it also the practice that frequently the judge would receive letters?

A At that time I can't tell you. I can tell you what the judge receives since February 2nd or 3rd, 1971.

Q Since you have been a judge?

A On many occasions, yes, I do receive letters, which I usually annex to the probation report and make a part of it, so they will accompany the defendant wherever he goes.

Q Do you know whether in the Monell case there had been any letters or telephone calls asking for leniency?

A I know of none. I was not in the office at the time he was sentenced. I don't know.

Q At the time of resentencing -- the time of sentencing was on March 5th; correct?

A Correct.

Q Were you in the office at that time?

A No, I was not. That was the day before I received a call you are speaking about that we spoke about earlier. I was not in the office. I was a county judge. I had been a county judge since February 2nd or 3rd of that year.

Q And you had already left the district attorney's office and were now sitting on the bench?

1
2 A That is correct.

3 Q And this call that you got was the day after the
4 first sentence?

5 A That's correct.

6 Q Not the resentencing?

7 A The day after the first sentencing.

8 THE COURT: The Saturday after the first sentencing?

9 THE WITNESS: That is correct. I received it on
a Saturday.

11 My recollection is the woman said in the call it
12 was yesterday. It was on a Saturday that I got the call.

13 Q How long have you known Mr. Doulin?

14 A I have known Mr. Doulin since sometime in 1951.

15 Q And at that time were you connected with the
16 district attorney's office?

17 A Before I was connected, when I was looking to
18 be connected, he was chairman of the City committee, the
19 city of Newburgh, at that time, I believe, or had just
20 assumed it or was going to assume it.

21 Q What was your first appointment as assistant
22 D. A.?

23 A I was appointed by Mr. Isseks at that time on
24 January 1, 1952. He was elected in November 1951.

25 Q During all the years from 1951 to the date that

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19 gwmch

Ingrassia-cross

98

you first became assistant district attorneys and the years you were district attorney, and during the years that you have been a judge, has Mr. Doulin ever offered you any money to influence the outcome of any case that you were handling, either as an assistant district attorney, a district attorney or a judge?

A No, he has not.

Q Did he ever talk to you to try to influence your determination either as an assistant district attorney, a district attorney or a judge?

A Absolutely not.

(Continued on next page)

JBjw 1

Ingrassia - cross

1
2 Q Did that include cases that you were handling
3 as a prosecutor?

4 A Well, that would be it, from when I was an
5 assistant district attorney, district attorney and
6 county judge.

7 Q Did he ever come to you and tell you that
8 he had been offered money?

9 A Absolutely not.

10 Q By anybody for the purpose of influencing
11 your decision as an assistant district attorney, a
12 district attorney or a judge?

13 A No, he never did come to me and tell me
14 that.

15 Q Did he ever tell you on any case that he
16 wanted you to negotiate or make a determination with
17 respect to any matter that you were handling as a
18 prosecutor or as a judge in accordance with his request?

19 A Let me say this: My answer to that is no
20 and I'll state unequivocally that the only time Mr. Doulin
21 asked me anything with reference to anything that was
22 pending in that office was the incident that I related
23 here and that's why I recall it so clearly, about Mr.
24 Greenberg.

25 Q You are talking about Mr. Doulin's request to

1 jbjw 2 Ingrassia - cross

2 adjourn a traffic hearing, is that correct?

3 A That's correct.

4 Q Did Mr. Doulin when he made that telephone
5 call tell you "I want you to fix that traffic ticket"?

6 A I don't recall whether it was a call or
7 whether it was at my office but he told me that or he
8 asked me if I would call Judge Roe and procure an
9 adjournment for Mr. Greenberg and he told me the reason.
10 He said Mr. Greenberg was scheduled to go to Hawaii,
11 and the judge would not adjourn it.

12 Q Judge, did you practice law for a long time
13 before you became an assistant district attorney,
14 a district attorney?

15 A Not a long time. I practiced law about a
16 year before I became an assistant district attorney but
17 I practiced law in the general practice for approximately
18 twenty years.

19 Q In your practice there were many times when
20 you had to have a case adjourned, is that true?

21 A Many a time.

22 Q Did you ever call up the other side, the
23 lawyer, and tell him you wanted the case adjourned?

24 MR. JOSSEN: Objection, your Honor.

25 Q Did you ever call a judge and tell the judge

that you had to have the case adjourned?

A Yes, I did.

MR. JOSSEN: Objection.

THE COURT: It is asked and answered.

Q Isn't that common practice in the legal profession and before any judiciary, that frequently parties can't appear and request is made for an adjournment?

MR. JOSSEN: Objection.

THE COURT: Sustained.

Q Judge, would you say that it is uncommon for participants in litigation to ask someone to adjourn a case?

MR. JOSSEN: Objection, your Honor.

THE COURT: Sustained.

Q Have you, as a judge, from time to time, received requests for other people to adjourn a case?

MR. JOSSEN: Objection, your Honor.

THE COURT: Overruled.

A Yes.

Q And this is handled in a relatively routine way, isn't that so, Judge?

MR. JOSSEN: Objection, your Honor.

THE COURT: Sustained. Form.

2 Q Judge, how did such request get handled by
3 you, when you were sitting as a judge?

4 MR. JOSSEN: Objection.

5 THE COURT: Sustained. Relevance.

6 Q Judge, can you say it is unusual for a lawyer
7 or for any party to call up someone and request that
8 the judge adjourn the case?

9 MR. JOSSEN: Objection, your Honor.

10 THE COURT: Sustained, form.

11 Q Is that being done, Judge Ingrassia, from
12 time to time?

13 MR. JOSSEN: Objection.

14 THE COURT: Sustained.

15 Q When Mr. Doulin called you about asking
16 to have this traffic hearing adjourned, did he tell you
17 he wanted the case dismissed on the traffic case?

18 A No, but I want to make one thing clear. I
19 didn't say he called me. I said he either called me or
20 he came to my office. I really don't recall.

21 THE COURT: He spoke to you either on the
22 phone or in person?

23 THE WITNESS: Right. He did not tell me or
24 ask me that he wanted it dismissed.

25 Q Did he offer you any money to have this

2 done for him?

3 A No.

4 Q Do you know what happened to the request
5 for the adjournment?

6 A I sure do. He didn't get it.

7 Q Just one final question, Judge Ingrassia.

8 Can you tell us from your knowledge whether
9 at any time on the Monell case either at the time of the
10 sentencing or at the time of the resentencing any promise
11 had been made to either the defendant or to Mr. Doulin
12 allegedly on the defendant's behalf that there would
13 be leniency in the sentencing?

14 MR. JOSSEN: Objection to the form.

15 THE COURT: I will amend it one way.

16 So far as you know.

17 Q So far as you know.

18 A I never made any such promise or commitment
19 and I have no knowledge of any of my assistants making
20 any such promise or commitment.

21 MR. PLATZMAN: Thank you, Judge.

22 REDIRECT EXAMINATION

23 BY MR. JOSSEN:

24 Q Judge Ingrassia, you testified on cross
25 examination that the process of plea bargaining is a common

1 jbjw 6

Ingrassia - redirect

2 one.

3 Would you tell us what factors you took
4 into account in connection with the particular plea that
5 you said you would accept in the Monell case?

6 A Yes. I took many factors into account.

7 First, when I was district attorney, how
8 strong a case did I have; how were the witnesses; would
9 the witnesses hold up.

10 Secondly, what type of crime was it.

11 Thirdly, what was the defendant's background,
12 what was his age; if he had a prior background, how long
13 had it been before he had been involved.

14 Many, many factors.

15 Thirdly, was there a chance that it was
16 going to get to trial; what was the condition of the --
17 there are so many, there are many individual variable
18 factors in it but those are some of the things and it
19 starts off basically by how good a case do you have;
20 that's the first thing.

21 Q Now, Judge Ingrassia, you were asked on
22 cross examination about the recommendation of the
23 district attorney for probation and you testified that
24 the judge makes a decision.

25 Can you tell us whether a district attorney's

1
2 or assistant district attorney's recommendation of pro-
3 bation would have some effect upon a sentencing judge?

4 MR. PLATZMAN: Well, I will object to that.
5 That all depends on the judge and the district attorney
6 and the file and many other factors and I don't think
7 he can answer that.

8 THE COURT: Well, if the witness can answer
9 it, fine. Why don't we specify the judge. He had
10 dealings, I am sure, with the judge in question.

11 Q Judge Ingrassia, do you know Judge Isseks of
12 the Orange County Court?

13 A I have known Judge Isseks for -- he was my
14 football coach in high school. That's how long I have
15 known him. I've know him since 1935, 1936 and he is one
16 of my closest personal friends.

17 Q Was there a time when you practiced before
18 Judge Isseks?

19 A Not really. I was never before him because
20 he was, didn't try criminal cases until the latter part
21 of the year that I was district attorney. I never
22 really appeared before Judge Isseks but I was, he appointed
23 me an assistant district attorney, I was in the office
24 with him for fifteen years. Approximately seven years
25 of it I was his chief assistant.

1 jbjw 8

Ingrassia - redirect

2 Q You were asked some questions on cross
3 examination relating to the first sentence and the
4 resentence.

5 Is there any question that a sentence of
6 zero to 2-1/2 years was a jail sentence?

7 A No question but it was a sentence that
8 couldn't be imposed legally at that time for that
9 crime; they wouldn't accept the prisoner with that
10 sentence.

11 Q But, sir, is there any question that the
12 sentence itself was intended to be a jail sentence?

13 A Speaks for itself. No question about it.

14 Q Judge Ingrassia, you were asked some questions
15 whether you found any reference on the Monell file,
16 Government's Exhibit 1, to a recommendation with respect
17 to sentencing commitment made by Mr. Doulin or Mrs.
18 Grant or anyone.

19 Judge, if Mrs. Grant or Mr. Doulin had made
20 a recommendation with respect to a sentence commitment,
21 would it be on the file?

22 A I wouldn't think that it would be.

23 MR. JOSSEN: No further questions, your
24 Honor.

25

1 jbjw 9

Ingrassia - recross

2 RECROSS EXAMINATION

3 BY MR. PLATZMAN:

4 Q When you had this telephone conversation
5 with this hysterical woman, she called you names about
6 sending her son to jail.

7 A Her son or her grandson.

8 Q Did Mrs. Grant, the woman that you spoke
9 to, ever tell you that she had a deal, that he wasn't
10 to go to jail?

11 A Absolutely not.

12 MR. PLATZMAN: No other questions.

13 THE WITNESS: If she had, I wouldn't have
14 sat on it for two years, believe me.

15 MR. JOSSEN: No further questions, your
16 Honor.

17 THE COURT: Thank you very much.

18 (Witness excused)

19 MR. SCHWARTZ: The government calls Jerome
20 Cohen.

21 J E R O M E S . C O H E N , called
22 as a witness by the Government, being first
23 duly sworn, testified as follows:

24 MR. SCHWARTZ: May I proceed, your Honor?

25 THE COURT: You may.

1 jbjw 10

Cohen - direct

2 DIRECT EXAMINATION

3 BY MR. SCHWARTZ:

4 Q Mr. Cohen, I am going to ask you to speak
5 up and try to direct your voice back to me, so that
6 everyone can hear you.

7 What is your current occupation, Mr. Cohen?

8 A I am an attorney.

9 Q Where do you practice?

10 A Port Jervis.

11 Q Is that located in Orange County?

12 A Yes, sir.

13 Q And who are you in practice with?

14 A I have a law firm: Cohen, Levy, Bavoso &
15 Weinstein.

16 Q Approximately how long have you been a
17 practicing attorney?

18 A 1953.

19 Q During your career, have you ever been
20 associated with the Orange County District Attorney's
21 Office?

22 A Yes, sir.

23 Q And would you tell us when you first
24 became associated with that office?

25 A I was sworn in as an assistant district attorney

1 jbjw 11

Cohen - direct

2 January 1, 1955.

3 Q And would you tell us, please, what other
4 positions if any you held in that office and how long
5 you remained in the Orange County District Attorney's
6 Office?

7 A I was chief assistant or first assistant
8 district attorney under now Judge Ingrassia and I was
9 acting district attorney and district attorney of
1 Orange County after my election until August 20, 1972.

11 Q What period of time did you serve as acting
12 district attorney?

13 A From February 4, 1971 until the end of the
14 year.

15 Q How did it come about that you became the
16 acting district attorney?

17 A Angelo Ingrassia, who was the district
18 attorney, became a judge on that day. And I was chief
19 assistant and became, by operation of law, the district
20 attorney, acting district attorney.

21 Q Did there come a time where you sought the
22 nomination for district attorney for the Republican
23 party?

24 A Yes.

25 Q And when did that occur?

1 A It started as soon as we knew Judge Ingrassia
2
3 was going to become Judge Ingrassia.

4 Q When would you say approximately that was?

5 A A month, six weeks before he took office.
6 December, January of 1970, into '71.

7 Q Were you the only one seeking that nomination?

8 A No, sir.

9 Q Would you tell us who else was?

10 A Mr. Andrew Mauriello, who was an assistant
11 district attorney, Mr. Abraham Weissman.

12 Q Was he in the district attorney's office?

13 A Yes, sir.

14 Q What position did he hold?

15 A Assistant District Attorney.

16 Q Did there come a time shortly after that
17 that you had any conversations with Mr. Doulin?

18 A I had many conversations with Mr. Doulin.
19 About becoming district attorney?

20 Q Yes.

21 A Yes, I notified him --

22 Q Before you are permitted to tell us the
23 conversation, I have some questions I must ask.

24 Do you recall having conversations with him?

25 A At least two.

Q At least two?

A Yes.

Q Let's turn for the first conversation.

Do you recall approximately when it was?

A No. It would be shortly after we learned that Mr. Ingrassia was going to become a judge.

Q Do you recall where it took place?

A No. I do not know whether it was a telephone conversation or an in-person conversation.

Do you recall whether anyone else was present?

A No one.

Q No you don't recall or no one else was present?

A There would be no one present under any circumstances.

Q Can you tell us as best you recall it the substance of the conversation, what you said to Mr. Doulin and what he said to you?

MR. PLATZMAN: I will object to this.

Apparently this is something to do with his work in the district attorney's office and I don't see its relevancy to the allegations under the respective counts.

MR. SCHWARTZ: Your Honor, this is a conversation with the defendant and I think it is fair to bring out as a background to the case and this witness' relation-

ship to the defendant.

THE COURT: It is background?

MR. SCHWARTZ: It is in part background, yes.

THE COURT: Overruled.

A It was a very brief conversation. It had to do with the fact that as chief assistant I wanted to be district attorney; I had been second banana and I wanted to be first banana and I told Mr. Doulin that I wanted it.

Q What if anything do you recall Mr. Doulin saying?

A Wait and see; go see the committee men and do what has to be done. That was basically --

MR. PLATZMAN: I move to strike out all the answers. I don't see that it is background for anything in this indictment.

THE COURT: Not much, I will tell you that. He said "Wait and see". I will let it stand and that is all it is, "Wait and see".

MR. PLATZMAN: Will your Honor hold this subject to connection, unless he can prove more? Otherwise I would like it stricken out and the jury told to disregard it.

THE COURT: I am going to let it stand and

1 jbjw 15

Cohen - direct

2 I will not go along with a "subject to connection" here.
3 I consider it to be background. It would appear that the
4 chief assistant, wanting to become district attorney,
5 went to see th- defendant. He had a conversation with
6 him and the defendant said "Wait and see".

7 I will let it stand for what it is worth.

8 Q One thing I neglected to ask you.

9 Do you see Mr. Doulin here in court?

10 A Yes, sure.

11 Q Would you point him out, please?

12 A The gentleman sitting there with the white
13 hair.

14 MR. SCHWARTZ: May the record reflect the
15 identification of the defendant.

16 THE COURT: It does.

17 Q After you had this conversation with Mr.
18 Doulin, what did you then do?

19 A I did what anybody seeking political office
20 does, one --

21 THE COURT: No.

22 MR. PLATZMAN: Objection.

23 THE COURT: There is an objection and properly
24 so. The objection is to your answer as responded to up
25 to this point. The answer as given is stricken.

1 jbjw 16

Cohen - direct

2 I suggest you start again and if you did
3 something, tell us what you did.

4 THE WITNESS: All right, sir. I am sorry.

5 THE COURT: The jury will disregard that
6 portion of the answer which has been given.

7 MR. PLATZMAN: I will continue to object
8 to this line of questioning, though, as not being
9 relevant background for the allegations contained within
10 the counts.

11 THE COURT: Overruled.

12 A I think the question was what did I do.

13 THE COURT: Yes.

14 A I prepared a letter stating my qualifications,
15 my years in the district attorney's office, my background,
16 my experience. I sent it to the committee men, Republican
17 committee men in Orange County, somewhere between 375
18 and 400 of them.

19 I went to see various committees, town and
20 city committees. I appeared before their regular
21 meetings. I talked to people that I knew who were on the
22 Republican committee of Orange County, solicited their
23 support, their endorsement. I received promises of
24 assistance from various chairmen and various members
25 of the Republican party.

Q Did there come a time when you had another meeting with Mr. Doulin?

A Yes.

Q Do you recall approximately when that occurred?

A That would have --

MR. PLATZMAN: May I have a continuing objection to this total line as to the ambitions of this witness to become a district attorney and its relationship to these counts?

THE COURT: I will take it and I will, at this point, suggest to you that I will consider a motion to strike at the end of the government's case or sooner, if you wish, and I will consider it at that time, consider at that time what to do with this testimony.

It has been represented to me that it is background. I can see a relevancy -- not perhaps highly relevant -- but I suggest that within the ambit of our rules, it is admissible and frankly would suggest that in this case I am referring to Rule 401 on evidence and Rule 102 and 104.

You may proceed.

MR. SCHWARTZ: Your Honor, may I request a

brief side bar?

THE COURT: Yes.

(At the side bar)

MR. SCHWARTZ: Your Honor, I requested this side bar because I wanted to give you what I expect the testimony to be.

At this second conversation, Mr. Cohen threatened to have a primary fight unless Mr. Doulin made up his mind as to who he was going to support and at that time Mr. Weissman and Mr. Mauriello and Mr. Cohen were all seeking the Republican nomination.

Mr. Doulin in substance stated that he had decided to promote from within and support Mr. Cohen but he wanted him to clearly understand there was no promise of a judgeship.

Shortly thereafter public announcement was made by Mr. Doulin. Mr. Weissman and Mr. Mauriello withdrew.

That conversation is important because later on this witness, Mr. Cohen, has a conversation with Mr. Weissman where he tells Mr. Weissman that he, Mr. Cohen, is going to be a long-term DA and Mr. Weissman has a very good chance of becoming a judge and he should stay in the district attorney's office and become a

jbjw 19

Cohen - direct

chief assistant district attorney and Mr. Weissman should stay in the office.

Mr. Weissman obviously is an important person in this case and the government believes that it has a right to show what was happening concerning Mr. Weissman at this time and what his motivations were and what power this defendant had with respect to influencing Mr. Weissman's successful accomplishment.

MR. PLATZMAN: I submit that is extremely remote to any of these issues, as to the ambitions of these three people to become district attorney.

What took place with respect to their questions of seeking office, support for office, withdrawals from the nomination I don't think has anything to do with the question of perjury as alleged in any one of the counts.

THE COURT: I suggest that in the Court's view this falls within the definition of relevant evidence, that is, evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence and since it falls within that very broad definition of the new Federal Rules of Evidence and it would be within the

1 jbjw 20

Cohen - direct

2 Court's discretion for purposes of background and
3 clarification to admit this, since the power of this
4 defendant is a relevant factor, for all these reasons,
5 the Court overrules the objection.

6 I think this would be a good time for us
7 to take our recess, if that is agreeable to you.

8 (In the presence of the jury)

9 THE COURT: Ladies and gentlemen, I conferred
10 with counsel on a legal matter and at the end of that
11 conversation noted the time and it was agreed by the
12 Court and counsel that this would be a convenient time
13 to take our evening adjournment.

14 Ladies and gentlemen, we are going to
15 adjourn now. I direct that you return and assemble in
16 your jury room here on the sixth floor ready to proceed
17 with the hearing of this trial tomorrow morning at 10:00
18 a.m. We will resume tomorrow at 10:00 a.m.

19 Before you go, I would admonish you as follows:

20 Please do not discuss the case among yourselves
21 nor with anyone else. Should you learn anything about
22 the case from any source outside of the courtroom, you
23 are directed to report the matter to me at once.

24 Finally, keep an open mind on all facets
25 of the case; it is just in its early stages. Keep your

1 jbjw 21

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2 minds open until the case has been submitted to you
3 following my charge.

4 The jury is excused.

5 You are directed to return to continue hear-
6 ing in this case tomorrow morning at 10:00 a.m.

7 (Adjourned to November 7, 1975 at
8 10:00 o'clock a.m.)
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UNITED STATES OF AMERICA

v.

75 Crim. 630

WILLIAM E. DOULIN

November 7, 1975
10:00 a.m.

(Trial resumed)

(In the robing room)

MR. SCHWARTZ: Your Honor, I asked to come in before we began today because when you set the trial date you told us if any troubles developed during the preparation you wanted to know as soon as possible. Since a couple have, I wanted to tell you this morning.

First, they relate to Mr. Richard Monell, who the Government intends to call as a witness. We had some difficulty locating Mr. Monell, who has been under subpoena, and he was located early this morning, in fact, he called in, and I understand he is on his way to the courthouse and should be here on time to put him on, hopefully, this afternoon.

But before we put him on there is something we just learned about that I did want to examine into, and that is the existence of an informant file on Mr. Monell. Apparently, at some time he did serve as an FBI informant, and I certainly want to examine that file for any 3500

material or Brady material, or anything else that may be in there, which either should be turned over to defense counsel or turned over to your Honor for in camera inspection if Government counsel doesn't believe it should be turned over to defense counsel.

For that reason, if we finish close to the lunch hour before we reach Monell, I may at that time request an early lunch your, perhaps not an extended one, but an early one, so I can do that homework and be sure when Mr. Monell takes the stand all those necessary steps have been taken.

I have called another witness down -- I don't want to mislead the Court -- another witness who is an important one, whom I have had no opportunity to talk to in the last two weeks, and I would hope not to be forced to put him on before having ample time to prepare him, but he will be in the courthouse.

THE COURT: I will be flexible relative to the luncheon recess. It is important that you examine whatever files you have, so that in accordance with the requirements of 3500 whatever would be appropriately turned over to counsel will be turned over to him. And in the event it is necessary for the Court to direct Mr. Monell to return on Monday morning, we will deal with that when, as and if we get to it.

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2 So if you indicate to me at some point in the
3 neighborhood of 12:15 to 12:30 this would be a convenient
4 time to take the luncheon recess, I am willing to recess
5 at whatever hour is convenient to you to enable you to do
6 what you are required to do.

7 MR. SCHWARTZ: Thank you, your Honor.

8 The only additional thing I would ask, until we
9 have had a chance to look at the file and your Honor has
10 a chance, there be no mention of it in court by anyone.

11 THE COURT: No, I should think not. There will
12 be no occasion for it because, except for objections, Mr.
13 Platzman will only get up to examine after you have
14 seen the file and we have dealt with the problem, and either
15 he gets material or I determine that there is no material
16 properly for him, and I will mark the file accordingly so
17 that it may be retained for the Court of Appeals.

18 MR. SCHWARTZ: Thank you, your Honor.

19 MR. PLATZMAN: When you said you would review
20 the question whether or not that material would be available
21 to me, I think his employment as an informant would be
22 very important as far as I am concerned, and I certainly
23 would want an opportunity to examine it as much as possible.

24 Not only am I in a similar position with respect
25 to this one item, but I am being given piles of papers I

never looked at before, and I have witnesses to talk to.

MR. SCHWARTZ: Some of this is 3500 material we are turned over well in advance. We have already turned over the Monell 3500 material.

MR. PLATZMAN: I recognize counsel is doing it in advance, but even in advance of the examination I just don't have the physical time.

THE COURT: You have got a week end coming up. I think what we will do is we will take it one step at a time. We will proceed now with the witness who is on the stand, we will finish with him, and then proceed to the next witness, whoever that may be, and when we get to a convenient point in midday, 12:15, 12:30, that you think appropriate for a luncheon recess, we will take one, and I will tack an additional fifteen minutes onto the usual one hour.

It is difficult with a jury. I do not like to cut too much out of the middle of the day. I will have to do it next Wednesday for another reason, but I don't like to do it too frequently. I am hopeful certain matters which will require your joint or several study can be handled over this week end at a time when a trial lawyer seems to spend as much time at work as he does during the week.

MR. PLATZMAN: I have an important family thing this weekend, but I guess I am out of it, with much criticism, as you can probably guess.

Are we working on Tuesday?

THE COURT: Yes, we will work all day Monday and all day Tuesday.

MR. PLATZMAN: There is so much confusion with this split holiday.

THE COURT: It is not a federal holiday. We have had the holiday which this equates to on Monday, October 27th, so we will be working through the week.

I received through Miss Kruger the following note from Alternate Juror No. 4:

"Judge Ward, I am Alt. Juror No. 4, Isaac Goldfield, and I have a problem. My supervisor tells me I am very much needed back at my job by Monday, November 10th. My preference is to stay and serve, but the nature of the relationship (supervisor and I) is such that my job may be endangered. I therefore request to be excused.

"Thank you.

"I.G."

He is the fourth alternate. Ursula Kruger, our deputy, has obtained the name and telephone number of his supervisor and I am perfectly willing to make a call. If

you both feel that it would be just as well to excuse the juror, we can do that. However, if you wish, I will make a call to the employer that no retaliatory action is to be taken relative to this juror and, of course, Miss Kruger would inform him that he would be remaining as an alternate juror.

Is there a preference?

MR. PLATZMAN: As far as I am concerned, we have four. I don't think this trial is going to be so long that we are going to be in danger of losing three jurors, and, as far as I am concerned, the man has a problem and I certainly wouldn't want to keep him from his job.

MR. SCHWARTZ: I am also concerned about a juror who is thinking about other things than the case, and I would have no objection to excusing him.

THE COURT: Very well.

Would you prefer I do it now or wait until the end of the day?

MR. SCHWARTZ: Is any juror missing today?

THE COURT: No, they are all here.

MR. SCHWARTZ: Then, as far as I am concerned, it could be done this morning.

THE COURT: Perhaps I will ask him to remain until the others go to lunch and excuse him out of their presence.

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Would that be satisfactory?

MR. SCHWARTZ: Fine.

MR. PLATZMAN: Fine.

(Continued on next page)

(In open court)

(Jury in box)

THE COURT: Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: I noted that you are all here promptly, and, as you observed, we were in the robing room taking care of some matters with counsel. You will find from time to time during the trial that there will be matters which I will take up with them. They occasionally involve legal questions; they occasionally involve scheduling questions. It is our desire that we move the case along so that we do not have prolonged periods of waiting. At the same time you must understand that there are occasions when there are matters, even in this case or other matters which will require us to keep you waiting.

I might suggest that we look ahead. We will probably recess sometime prior to 1:00 for lunch, because there are certain things that we have to take care of. The lunch hour today will be an extra fifteen minutes, so you will have today's lunch an hour and fifteen minutes, and we will work this other matter in during the lunch hour rather than have a delay in getting started during the course of the morning. We will resume now with the direct examination of Jerome S. Cohen, who was on the stand

2 yesterday when we recessed.

3

4 J E R O M E S. C O H E N, having been previously
5 duly sworn, resumed the stand and testified
6 further as follows:

7 THE COURT: Mr. Cohen, I would remind you that
8 you will be continuing your testimony under the oath which
9 was administered to you yesterday afternoon. Do you under-
10 stand that?

11 THE WITNESS: Yes, sir.

12 MR. SCHWARTZ: May I proceed, your Honor?

13 THE COURT: You may proceed, Mr. Schwartz.

14 DIRECT EXAMINATION (Continued)

15 BY MR. SCHWARTZ:

16 Q Mr. Cohen, before we adjourned yesterday you
17 told us about a meeting you had with Mr. Doulin concerning
18 your candidacy for the district attorney's office; do you
19 recall that?

20 A Yes, sir.

21 Q And you told us about some steps that you took
22 to gain the nomination of the Republican party for the
23 district attorney's position.

24 A The endorsement.

25 Q The endorsement, yes.

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Do you recall prior to gaining that endorsement
a second conversation with Mr. Doulin?

A Yes.

Q And where did that take place, if you recall?

A It took place at the Orange County Republican
headquarters in Goshen.

Q Please keep your voice up.

A I am sorry.

Q Do you recall when it took place?

A It would be shortly before the executive
committee met for an endorsement for recommendation of interim
appointment and before the County convention of the full
committee.

Q And again this is in 1971, is that correct?

A Yes, oh, yes.

Q Do you recall what time of day it was that you
met Mr. Doulin?

A No, sir.

Q Do you recall if anyone else was present?

A No one.

Q No one?

A Not that I recall.

Q Would you tell us, as best you recall, in
substance what you said to Mr. Doulin and what Mr. Doulin

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Cohen - direct

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said to you.

MR. PLATZMAN: May it please the Court, I am assuming, since we have a gap since yesterday that the objections I have taken to this line of testimony concerning these conversations still hold and obtained through the entire line.

THE COURT: Your objection was as to relevance?

MR. PLATZMAN: Yes, sir.

THE COURT: I deem your objection on this line of inquiry to be a continuing one, and the same ruling shall apply.

MR. PLATZMAN: Thank you, sir.

A It was shortly before the endorsement was to be granted. There were three persons involved in seeking the endorsement: myself, Assistant District Attorney Andrew Mauriello, Assistant District Attorney Abraham Weissman. We had contacted a number of people. I thought I had substantial support. I went to Mr. Doulin to inquiry whether or not I had his support. The conversation -- I cannot tell you the exact words but the substance was to the effect that there was very shortly going to be a convention --

Q Is this what you said?

A Yes, basically -- and if he was going to support Mr. Mauriello, who was second in seniority, I would

1 withdraw. If he was going to support me, it was my
2 understanding Mr. Mauriello was going to withdraw. I indi-
3 cated I had a number of years in the district attorney's
4 office -- at the time I think I had approximately fifty.
5 Mr. Mauriello had approximately ten, that I was first
6 assistant and I wanted the position, and I further indicated
7 that if it was going to be anybody but the two senior men
8 in the office, that there would be a convention fight and
9 probably a primary. Which one of us would go in the primary
10 I didn't know but there would probably be a primary fight.
11 He told me that there would be no primary fight and he was
12 going to support me, and as far as he was concerned I would
13 be the candidate for district attorney of Orange County.
14

15 He told me to do a good job. He indicated to
16 me, in substance, that because he was supporting me as
17 district attorney, if a judgeship opened up there was no
18 necessity that he would support me for any judgeship, as
19 my predecessors in the district attorney's office had
20 become judges.

21 I told them I was not interested in a judgeship,
22 that I intended to be a one-term district attorney, and he
23 said, "Well, we'll see about that."

24 We shook hands and that was it -- he said,
25 "That's up to you, if you want to be a one-term district

1 attorney."

2 Q Can you recall anything else that he said?

3 A No.

4 Q In your description of the conversation you
5 referred to two senior men in the office.

6 A Yes.

7 Q And who were you referring to?

8 A Myself and Andrew Mauriello.

9 Q What happened after this conversation?

10 A As I recall, Mr. Doulin made an announcement in
11 the paper or through the media that he had elected to
12 support myself, me, for the appointment, and for district
13 attorney.

14 Q And what happened after that?

15 A Mr. Mauriello withdrew and congratulated me,
16 and Mr. Weissman withdrew.

17 Q Then what happened?

18 A There were no other names presented and I became
19 district attorney -- the nominee for district attorney of
20 the Republican party.

21 Q No other presented where?

22 A To the nominating conference, the convention
23 or to the executive committee.

24 Q And then what happened?

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2 A I ran in November against a Republican
3 convention unanimously endorsed at the county convention
4 and won --

5 THE COURT: You say you ran against or as a
6 Republican?

7 THE WITNESS: As a Republican against a
8 Democratic candidate.

9 THE COURT: You were the Republican candidate --

10 THE WITNESS: Yes.

11 THE COURT: -- for district attorney.

12 THE WITNESS: Yes.

13 THE COURT: And that was in November of 1971.

14 THE WITNESS: November 1971.

15 THE COURT: And you were elected?

16 THE WITNESS: Yes, sir.

17 Q And after --

18 A By approximately 16,000 votes.

19 Q Excuse me? I did not hear that.

20 THE COURT: "By approximately 16,000 votes."

21 Q After you were elected how long did you
22 continue to serve as district attorney?

23 A From January 1, 1972 to August 20, 1972.

24 Q Approximately eight months?

25 A Approximately, yes.

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Q And then what happened?

A I resigned because of my health.

Q Between the time of your election in January 1972 did you have any meetings with Mr. Weissman at your office?

A Daily.

Q Do you recall any specific meetings with him?

A There was a meeting dealing with --

Q Well, all that I am asking you is whether you recall a specific meeting at this time.

A Yes.

Q Do you recall where it took place?

A In the District Attorney's office in the County Government Center.

Q Do you recall approximately when it was?

A No; it would be sometime between November and the end of December.

Q 1971?

A Yes, sir.

Q Was there anyone present during the conversation?

A No.

MR. PLATZMAN: I am going to object to any conversation with Mr. Weissman, not in the presence of my

defendant.

THE COURT: The time of the conversation?

MR. SCHWARTZ: November and December 1971, your Honor.

THE COURT: This would be under the conspiracy theory, is that correct?

MR. SCHWARTZ: Yes, your Honor, that, and of course I'm going to ask Mr. Cohen specifically what he said, and it may not even be necessary to elicit anything else.

THE COURT: All right, let us take it one step at a time, then, because I am prepared to rule either way, but certainly limit it to anything that Mr. Cohen himself may have said in his end of the conversation, I am going to permit that, and I would probably be prepared, in view of the memorandum which has been presented to the Court, a copy of which has been given to counsel, I would be prepared to admit the other party's words as well at this point in time; but at the moment we are limiting the conversation to just -- that there was a conversation in November and December of 1971 with Abraham Weissman, at which no one else was present and at which Mr. Cohen, who is here and who is subject to cross-examination, made certain statements.

MR. PLATZMAN: Except that it was a conspiracy

2 then, it might be between Mr. Weissman and Mr. Cohen.
3 That is what he is trying to bring out -- I don't know,
4 I haven't the slightest idea what this conversation was
5 about so far, but it certainly seems to me to be remote to
6 what is being charged in this indictment against Mr. Doulin,
7 which happened seven or eight months after the Monell
8 situation took place.

9 THE COURT: Having been familiar with the
10 background of the case, having reviewed the extensive
11 motions that were presented, I am going to admit this
12 portion of the conversation subject to connection. I can
13 see the background being developed. We are now getting
14 closer in point of time to the present, and under the
15 circumstances you have an objection, which is overruled.

16 MR. SCHWARTZ: May I proceed, your Honor?

17 THE COURT: Yes.

18 MR. SCHWARTZ: Thank you, your Honor.

19 THE COURT: Let me just establish the place.

20 You did say the County Government Center, but
21 I think it might be helpful to us to know the location.

22 THE WITNESS: It was in the District Attorney's
23 office in the County Government Center which is located in
24 Goshen, which is the county seat.

25 THE COURT: Ladies and gentlemen, Goshen is in

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Orange County and is within the Southern District of New York. The entire county of Orange is located in the Southern District of New York. There is an allegation in the indictment that certain things happened within the Southern District of New York, and both the county of Orange and also this courthouse where the grand jury sits are both within the Southern District of New York.

MR. SCHWARTZ: Thank you, your Honor.

BY MR. SCHWARTZ:

Q Mr. Cohen, you were about to tell us about this meeting with Mr. Weissman. Will you please tell us what you said to him.

A Well, let me preface it by saying this, we had a tremendous turnover in staff because the office was going full-time. I was the first full-time district attorney of Orange County upon my election, and under the state law --

MR. PLATZMAN: I am going to object to this as not responsive.

THE COURT: Well, I think the jury has also gotten the background from Judge Ingrassia, and I think we could move on.

Q Would you please tell us --

THE COURT: You were not present when Judge Ingrassia was here?

1 THE WITNESS: No.

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3 THE COURT: But the jury had enough from him
4 about the change, from part-time to full-time. I think
5 they have the background of it and I think we can move on.

6 Q Would you tell us what you said.

7 A Mr. Weissman wanted to leave the office and
8 resume private practice.

9 I told him I would like him to stay because of
10 the tremendous turnover in staff, he was the most experienced
11 trial lawyer that we had in the office.

12 I told him we would try and get full-time
13 positions made with a salary that was commensurate.

14 I told him if he would stay, as the others were
15 leaving, I would appoint him as chief assistant, which would
16 be the highest salary that could be given by the legislature
17 next to my own.

18 He wanted to think about it. I also told him
19 that I knew he wanted to be a judge, that I had no judicial
20 aspirations, and if a judgeship opened up, "Be my guest!"

21 Q Did Mr. Weissman remain in the district
22 attorney's office?

23 A Yes.

24 Q And what position did he hold?

25 A Chief assistant.

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Cohen - direct

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(Mr. Schwartz hands to the witness)

Q Mr. Cohen, I have placed before you Government's Exhibit 1 in evidence, which has been identified as the district attorney's file in the Richard Monell case. Do you recognize it?

A I do.

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Cohen-direct

Q Would you look at the cover, please. Do you see any handwriting that is your handwriting?

A Yes, sir.

Q And will you tell us what it is?

A On the line that says "Plea entered 9/26/68, arraignment, Max Levinson present, not guilty," that is my writing.

It means I handled the arraignment and he was presented to the Court and he pled not guilty to the indictment.

THE COURT: Who is Max Levinson?

THE WITNESS: Mr. Monell's attorney at that particular time.

A On the line that says "Date of sentence 3/5/71, defendant and N. Shapiro present before Isseks, J.," that is my writing.

The sentence, "Department of Correction, 2-1/2 years," that is my writing.

I entered the word "Isseks" on the line saying "Judge," because he was the judge that handled the sentencing.

In the upper right-hand corner --

THE COURT: So it is clear, it says "defendant and N. Shapiro present."

1 2 gwmch Cohen-direct

2 That is a different person than Mr. Levinson.
3 Will you explain who N. Shapiro was and what he was doing
4 on March 5, 1971?

5 THE WITNESS: He was chief counsel with the Legal
6 Aid Society of Orange County who ultimately ended up
7 representing this defendant.

8 THE COURT: And on that occasion the appearances
9 were before Judge Isseks?

10 THE WITNESS: Right.

11 THE COURT: What court was he sitting in?

12 THE WITNESS: County Court of Orange County.

13 Q Is there anything further you recognize as your
14 own handwriting?

15 A In the upper right-hand corner there is a
16 notation, "8/16/68, \$5,000 property bond posted - Andy
17 consented to same - order exonerating original bail and
18 new order - defendant surrendered to Court prior to new
19 order."

20 That is my writing and Andy refers to Andrew
21 Mauriello, who was at that time handling the case in 1968.
22 He presented it to the grand jury as it indicates on the
23 first line.

24 I made this notation probably pursuant to a
25 telephone call, and Mr. Mauriello indicated a new bail of

1 3 gwmch Cohen-direct

2 \$5,000.

3 Q Mr. Cohen, from time to time in the office
4 did you have an opportunity to see the handwriting of
5 other people who you were working with in the district
6 attorney's office?

7 A Yes.

8 Q Would you be able to recognize their various
9 handwritings?

10 A Some of them, yes.

11 Q Would you be able to recognize Mr. Weissman's
12 handwriting?

13 A Yes.

14 Q Did you see it frequently?

15 A Yes.

16 Q Do you see anything on the face of the file which
17 you recognize as Mr. Weissman's handwriting?

18 A Yes.

19 Q Would you tell us what it is, please?

20 A Where it says, "Date of trial," there is "12/14/70.
21 Defendant and N. Shapiro present. Pled guilty to attempted
22 assault second. O'Gorman, J."

23 Once again, Mr. Shapiro was chief counsel of the
24 Legal Aid Society and had taken over representing this
25 defendant obviously from his prior attorney.

4 gwmch

Cohen-direct

THE COURT: O'Gorman, J. was the county judge
before whom the plea was entered?

THE WITNESS: Yes, sir. That was the year 1970.

Q Do you see anything else on the front of the file
you recognize as Mr. Weissman's handwriting?

A Yes. On the bottom line, there is a notation
"3/26/71. Defendant and N. Shapiro present. Sentence
of 3/5/71 set aside by Court. Resentenced to probation
five years. Isseks, J."

Q Anything else?

A Not that. I recognize.

There are other people's handwriting on there.

THE COURT: But you have covered everything that
was in your handwriting or in the handwriting you recognize
as Mr. Weissman's?

THE WITNESS: Yes, sir.

Mr. Kopald's handwriting is on there, too.

Q You will have to speak up if you are going to
say anything.

A Mr. Kopald's handwriting is on there, too.

Q Where do you see that?

A Notation "12/9/70. N. Shapiro" -- I cannot read
it. "N. Shapiro present. Failed to" -- something.

"Cancel bail. So ordered. Forfeiture stayed. To April 12-

1 5 gwmch Cohen-direct

2 14," and Mr. Kopald's initials are under it. So that's
3 how I know it is his.

4 THE COURT: That reported a happening during
5 the course of the case?

6 THE WITNESS: From 1968 to 1971. It's a notation
7 by an assistant district attorney who at one time handled
8 the file.

9 Q Let me show you what has previously been marked
10 Exhibit 1-B, which I just removed from Exhibit 1.

11 I ask you whether you recognize the handwriting
12 of Exhibit 1-B.

13 A Yes.

14 Q And whose handwriting is it?

15 A It appears to be Mr. Weissman's, mostly. There
16 are some notations on here I do not know who they are,
17 and it appears to be a trial subpoena list of witnesses,
18 in other words, the darker writing appears to be Mr.
19 Weissman's, the lighter writing on the fourth line, and the
20 bottom, and these 2 PMs and 4 PMs, I do not know who
21 wrote those.

22 It is a witness list for subpoenas to be issued.

23 Q In preparation for trial?

24 A Yes.

25 Q Mr. Cohen, let me direct your attention to

6 gwmch

Cohen-direct

Maron 5, 1971.

Were you in court in Orange County on that day?

A Yes, sir.

Q Could you tell us, generally speaking, which court you were in, which judge you were before, and what your duties were that day?

A I was in the County Court of Orange County before Judge Isseks, and it was my turn to handle whatever came up that day. It was a Friday and on Friday we usually had sentencings, arraignments, change of pleas, whatever proceedings that would normally be taken without trials.

Q And what was your function to be in court that day?

A On behalf of the district attorney's office, to present these cases to the Court and dispose of them either by plea or, if they were being arraigned, to enter a plea to the indictment -- guilty, not guilty -- or make a motion for bail, application for motions.

If it was for sentencing, present the case to the Court and mark the file and have it disposed of.

THE COURT: In other words, you handled the calendar that day?

THE WITNESS: For that day.

1 7 gwmch

Cohen-direct

2 THE COURT: Before Judge Isseks on behalf of the
3 People of the State of New York?

4 THE WITNESS: That's correct.

5 THE COURT: As an assistant district attorney of
6 Orange County?

7 THE WITNESS: I would be acting district attorney
8 at that time. Mr. Ingrassia had been made a judge the
9 month before and it was my day to take sentencing and
10 arraignments.

11 Q Referring specifically to the case of Richard
12 Monell, do you recall that case being on the calendar that
13 day?

14 A Specifically, no. From the file and from the
15 calendar, yes.

16 Q Do you recall who else was present in court that
17 day in connection with the Monell case?

18 A His attorney and the defendant.

19 Q His attorney, meaning Norman Shapiro?

20 A Yes.

21 Q And the defendant, Richard Monell?

22 A Yes, sir.

23 Q Would you tell us, as best you recall, what
24 happened in connection with that case?

25 A He was presented to the Court. Upon his plea of

8 gwmch

Cohen-direct

guilty to attempted assault in the second degree. I believe it was an old law case, in other words, an old penal law case, because the State of New York had changed its penal law, and I made this known to the judge and he was presented with his attorney, and he was sentenced.

Q Do you recall what was said?

A No. To tell you exactly what I said I cannot, but I can tell you basically what I said because it was a rather routine thing.

Q When you say "basically," do you recall the substance of what you said to the Court?

A Yes. I indicated to the Court it was an old law case and it is my belief he would have to be sentenced under the old law.

Q Did you make a sentencing recommendation?

A Not that I recall. Not in open court.

Is that what you are asking me?

Q Yes. Did you at any time?

A Not that I can recall.

Q Let me show you what we have previously marked as Government's Exhibit 4 for identification, and direct your attention to the bottom of Page 2, the top of Page 3.

Please read that to yourself and see if it helps you recall what you said in connection with a recommendation.

1 9 gwmch

Cohen-direct

2 A The Court asked me if I wished to be heard, and
3 I said no.

4 MR. PLATZMAN: May I see that?

5 (Document handed to Mr. Platzman.)

6 Q Do you recall the sentence?

7 A Pardon?

8 Q Do you recall the sentence that Mr. Monell
9 received?

10 A Yes. The Department of Corrections, zero to
11 2-1/2.

12 Q What happened after the sentencing, if you recall?

13 A He was taken away and we went on to the next
14 case.

15 Q Do you remember anything else happening that day --

16 A No.

17 Q -- in connection with the Monell case?

18 A No, sir.

19 Q At the time that you were acting district attorney,
20 was there a procedure in your office for recording any
21 commitments or promises as to sentencing recommendations
22 to be made in court?

23 A Yes. It was written on the inside of the flap
24 or someplace on the file. On the inside cover of the
25 folder is where we usually put them.

1 10 gwmch

Cohen-direct

2 Q Was there any commitment in the Monell case to
3 make a sentencing recommendation?

4 A No.

5 Q Did you ever commit your office to make such a
6 recommendation?

7 A No, sir.

8 Q You are certain of it?

9 A Absolutely.

10 Q Let me show you a document which has previously
11 been marked as Government's Exhibit 1-C for identification,
12 which I have just removed from Exhibit 1 in evidence.

13 Do you recognize that exhibit?

14 A I do.

15 Q What is it?

16 A It's a probation report furnished by the Orange
17 County probation department on Richard Monell. It has my
18 handwriting in two places on it.

19 Q Would you please tell us what is in your hand-
20 writing on that?

21 A "AI" on the front cover, which meant that the case
22 was before Abraham Isseks, and "2-1/2" on the inside cover.

23 Q And what does the 2-1/2 signify, if you recall?

24 A To the best of my recollection, the 2-1/2 indicates
25 that that is the maximum he could receive under the old law

- 1 ll gwmch Cohen-direct
- 2 as he had pled to it, or that I felt he should get 2-1/2,
- 3 which was the maximum.
- 4 Q Do you remember which it was in this case?
- 5 A No, sir, not at this time.
- 6 Q You have said that you thought 2-1/2 was the
- 7 maximum?
- 8 A Yes, sir.
- 9 Q And that you recommended - excuse me -- that you
- 10 told Judge Isseks it was an old law case?
- 11 A That's correct.
- 12 Q Was it an old law case?
- 13 A It was a mistake in sentence.
- 14 Q Whose mistake?
- 15 A Mine.
- 16 Q He should not have been sentenced under the old
- 17 law; is that correct?
- 18 A No. He should have gotten zero to 3.
- 19 Q Shortly after Mr. Monell's sentence for which you
- 20 were present in court, were you contacted by anyone con-
- 21 cerning that sentence?
- 22 A I received a phone call from a woman.
- 23 Q And without telling us anything that was said
- 24 in the conversation yet, can you tell us who the woman
- 25 was, if you know?

1 12 gwmch Cohen-direct

2 A No.

3 Q Did she identify herself?

4 A If she did, I don't recall it.

5 Q Did she identify any particular case she was
6 talking about?

7 A She mentioned Monell.

8 MR. PLATZMAN: I am going to object to this line
9 of testimony, if it please the Court.

10 It is the same problem we had yesterday with the
11 prior witness.

12 THE COURT: Yes.

13 MR. SCHWARTZ: Your Honor, I think he can identify
14 that he got this phone call, it was about this case, and
15 there will be other circumstantial evidence to indicate
16 who made the call.

17 THE COURT: It is the same type of offer that you
18 made yesterday?

19 MR. SCHWARTZ: Yes. A call on the same day, in
20 other words, shortly after the sentence.

21 THE COURT: The sentencing was on a Friday?

22 THE WITNESS: Yes, sir.

23 THE COURT: When did you receive this call?

24 THE WITNESS: It would be within several days.
25 I can't tell you whether it was Friday, Saturday, Monday.

1 13 gwmch Cohen-direct

2 Within a couple of days.

3 MR. SCHWARTZ: Yesterday it was on a Saturday,
4 the day after the sentence.

5 THE COURT: It was a woman?

6 THE WITNESS: Yes, sir.

7 THE COURT: Did she identify herself by name?

8 THE WITNESS: Not that I can recall, sir.

9 THE COURT: Did she identify herself as being in
10 any way a friend or relative or connected with Richard
11 Monell? Just answer yes or no.

12 THE WITNESS: Not that I can recall.

13 THE COURT: I gather the subject of the call was
14 the Monell case?

15 THE WITNESS: Yes, sir, she mentioned --

16 THE COURT: Don't go into yet what she mentioned.

17 THE WITNESS: I'm sorry.

18 Q Can you describe the tone of her voice?

19 A Not at this time.

20 The tone of her voice?

21 She was angry and upset and irate and annoyed,
22 whatever way you want to put it. It was not a gentle tone
23 of voice, if you want to put it that way.

24 THE COURT: And this caller discussed with you,
25 without going into details, the Monell case? Yes or no.

1 THE WITNESS: Yes.

2 THE COURT: Would you step to the side bar?
3 I would like to have an offer of proof by the Government
4 on two subjects.
5

6 (At the side bar)

7 THE COURT: Number one, let me hear the substance
8 of the conversation. Number two, you might go again through
9 how you at this point in time believe you can connect it up.

10 MR. SCHWARTZ: As to this particular call, the
11 caller told Mr. Cohen in similar words to what we heard
12 yesterday with Mr. Ingrassia that Monell should not have
13 gone to jail, somebody was wrong, he is a good boy, that
14 she had been promised he would not go to jail. That is this
15 call.

16 Now, the way the Government intends to connect
17 this up is in a number of ways:

18 First, there will be testimony from a person who
19 was present when Mrs. Monell-- excuse me -- Mrs. Grant
20 was making a lot of phone calls right after the sentencing.
21 The person does not know who Mrs. Grant called but remembers
22 that she was calling a number of people and, of course,
23 that her reaction was one of being disturbed at her
24 grandson going to jail.

25 In addition to that, Mrs. Grant, if we can get

her here, admits making telephone calls but denies there was any promise made to her. She admits that she did call a number of people but it was merely to gain information and to find out what happened.

In addition to that, there was another phone call made to another witness on the day of the sentencing, in which Mrs. Grant identified herself as Mrs. Grant, the grandmother of Richard Monell, and demanded to know why Richard Monell had gone to jail when his probation had been bought and paid for.

THE COURT: You see, there are several problems here, and I think you have put your finger on one that is disturbing to the Court.

This unknown person who you say, by circumstantial evidence, was the grandmother, and by your standards was a co-conspirator, had a conversation with the district attorney. You say the conversation is admissible here because it was in furtherance of the conspiracy. I am going to sustain the objection here on the ground that this conversation was not in furtherance of the conspiracy.

I recognize the points that you have made and I would suggest that the other proof that you adduce may permit you to argue certain things, but I am troubled by the serious question in my mind, whether you can connect this up

properly. At the worst, if you could lay a proper foundation, I would permit you to recall this witness for the limited purpose of eliciting the subject matter of this conversation.

I recognize you want to get in the fact that this witness said a promise had been made, but it does not seem to me at this point, with this witness' position, a statement such as that can fairly be said to be an act or statement in furtherance of the conspiracy.

The conspirator who was angry, who was making an admission, perhaps, against her own interest, but it does trouble me here that we then have to relate that over to Mr. Doulin.

MR. SCHWARTZ: It seems to me what happened here is something went wrong with a promise that was made as to what Mr. Monell's sentence would be, or at least as far as the co-conspirator grandmother believed a promise a promise had been made and something went wrong with that. When something went wrong, it was part of the conspiracy, it was part of her role to find out what happened, why it didn't go through, what was the problem, and that's what these calls were all about.

THE COURT: I can see your point and I can see the point on relevance, but I have difficulty in seeing

that it was in furtherance of the conspiracy.

Let me go on with one thing. What did he say in response to the statement that she said a promise had been made? What, if anything, do you say he said?

MR. SCHWARTZ: He said, "I don't know what you are talking about," and hung up.

THE COURT: Then he didn't, obviously.

I can see it being an admission against her interest, but she is not a defendant here. You present this, which ordinarily would be hearsay, as an exception because it's a statement made by a co-conspirator in the course of the conspiracy and in furtherance of the conspiracy.

The problem I have at this point is to accept this particular utterance as a statement in furtherance of the conspiracy. I don't see it.

I have the second problem, which I haven't articulated, of the witness herself having spoken relative to this conversation denying that she ever made this comment. We have this gentleman, four years after the event, trying to recall an angry telephone conversation, the exact words and substance.

I, at this point in time, do not believe it should go in. There may also be a question in my mind of the

1 truthworthiness of the statement which to me is damaging.
2
3 There is no question that it would have a damaging effect,
4
5 but I wonder under the circumstances whether I could
6 fairly hold it was in furtherance of the conspiracy.

7 You might address yourself to that. If you can
8 convince me I am in error, I am prepared to listen, but
9 I don't see a statement made like this being made in
10 furtherance of the conspiracy, made, for example, to a
11 completely uninvolved person. She wasn't going back to her
12 partner in crime and saying, "Now look, you have to do
13 something." Here is a man who knew nothing about it.

14 MR. SCHWARTZ: She, of course, didn't know and
15 does not have to know who all the co-conspirators are.
16 She believed that she was doing something in furtherance
17 of the conspiracy, and it seems to me that the co-venturers
18 or the co-conspirators take that chance, that the other
19 members of the conspiracy will take some individual action
20 to try and further the goals and aims of the conspiracy.

21 That's what Mrs. Grant did here.

22 MR. PLATZMAN: Would that be a shotgun approach,
23 picking anybody's name in the telephone book, or would it
24 be normal for her to call the very person with whom she
25 was in conspiracy? Not a stranger to the conspiracy who
could only mess up the conspiracy, if there was one.

MR. SCHWARTZ: She is going to the person who was in court when this happened, who represented the district attorney's office.

MR. PLATZMAN: But unless she had contacted -- there is some evidence she contacted Mr. Doulin, the very man you say she was in conspiracy with, I don't see the basis for calling for the testimony of this man which could be extremely damaging at this point, assuming it turns out there is no foundation.

MR. SCHWARTZ: I represent to the Court that there will be testimony that Mrs. Grant did go to see Mr. Doulin during the course of the conspiracy, or attempted to, and may have had difficulty reaching him.

THE COURT: I am going to adhere to my ruling. I at this point will not admit it. But that is not a final ruling. It may be that as the record is developed you could get this conversation in. But I feel, in the present state of the record, rather than let it in subject to connection, it is damaging, I would take the chance of infecting the record with something that I might be unable to eradicate even where I to say it wasn't connected up, strike it and disregard it.

I am going to take a restrictive attitude as far as this particular conversation is concerned. And the

basis of my ruling is that at this point I do not see it to be in furtherance of the conspiracy. I am willing to wait and review the matter as the trial develops.

MR. SCHWARTZ: As part of that, am I correct you are also troubled by the fact that this is a recollection four years later?

THE COURT: That is for the jury. If I were to let it in, that's for the jury, but he does say that someone called him and he is giving words which are very serious in my book, a promise has been made. That's an element here which is important.

Therefore, I think I would regard it more as an erroneous admission of the conversation and prejudicial than if I determined it shouldn't be admitted and strike it.

His recollection is up to the jury. Whether he recalls it or not they can go to work on cross-examination on that.

MR. PLATZMAN: Except to the extent that the recollection does play a part in your Honor's ruling how far you would go with hearsay. It is discretionary in the Court.

THE COURT: There is in the new rules where I can, on the basis that the prejudice outweighs the probative value, keep it out. I haven't reached that conclusion.

I don't wish to do that at this time.

I want to leave the door open to see the whole picture, but I fear if I let it in at this point it can be considered as infecting the record in a fatal way. Therefore, I will keep it out but permit you, as I have indicated, the opportunity to come back to the subject later in the trial.

MR. SCHWARTZ: Thank you, your Honor.

(Continued on next page)

(In open court)

MR. SCHWARTZ: May I proceed, your Honor?

THE COURT: Yes.

BY MR. SCHWARTZ:

Q Mr. Cohen, you have been referring and we have heard in the courtroom a reference to a sentence of zero to 2-1/2. Will you explain to us what that means?

A From one day to a maximum of 2-1/2 years in the custody of the Department of Correction at an institution in the state of New York where they place a defendant after classification as to age, and so forth and so on.

THE COURT: As I understand it, what the judge does when he sentences a person from zero to 2-1/2 years, he turns that person over to the Department of Correction, and gives the Department of Correction full discretion that they could hold that person for a minimum period of one day to a maximum of 2-1/2 years; is that correct?

THE WITNESS: Subject to their rules of parole and so forth, yes, sir, absolutely.

Q Now, Mr. Cohen, earlier in your testimony you told us where you mentioned the Republican party committee and the convention. Will you first tell us what the committee is.

A The committee is a group of citizens that are

1
2 elected by their fellow citizens who have designated
3 themselves with an affiliation as to a particular party,
4 be it Democratic, Republican, Socialist, Welfare, American
5 Labor -- it doesn't make any difference. They are elected
6 by other registered voters in that particular party, and
7 they serve for a period of two years representing their
8 fellow citizens on either the Republican, Democratic or
9 any other committee for that county.

10 Q Is there something called an executive
11 committee?

12 A There is.

13 Q What is it?

14 A The executive committee in our county consists
15 of members who have been elected to the committee itself
16 from each territorial jurisdiction, be it city or town,
17 and the executive member is elected by the committee to
18 serve as a liaison or their representative on the county
19 level between regular county conventions.

20 Q And what is the function of the executive
21 committee?

22 A I would have to say it is advisory in steering
23 and runs -- it would be like the board of directors for a
24 corporation between stockholders' meetings. They supposedly
25 run the party with the help of the officers that are

1
2 elected.

3 Q What is the business that they are running?

4 A The Republican party of Orange County or New York
5 County, or anyplace.

6 Q I am asking, for example, what do they do?

7 A Make recommendations to fill offices that are
8 filled by appointment; review the fiscal affairs of the
9 organization; have dinners; advise and guide.

10 Q And who is the chairman of the executive
11 committee?

12 A The chairman of the Republican party for that
13 county.

14 Q And who is that in Orange County?

15 A Mr. Doulin.

16 Q Now referring to the conventions that you
17 mention, how many people attend such a convention in
18 Orange County?

19 A Depending whether there are contests for
20 various elected positions or for various endorsements, you
21 could have 350. Some attend in person; some send proxies,
22 but there could be as many as 300 or 350, and there could
23 be as few as 150.

24 Q And do candidates make known at the convention
25 the endorsements that they have for positions?

1
2 A For elected positions, yes.

3 Q And that would include the endorsement of
4 people on the executive committee?

5 A Pardon?

6 (Question read)

7 Q Let me rephrase that.

8 A I don't understand.

9 Q When they make known who endorses them or who
10 supports them, that would include people who are sitting on
11 the executive committee who may support them?

12 A Would it include them? Yes, because they are
13 also committeemen.

14 Q And from time to time does Mr. Doulin support
15 candidates?

16 A Yes.

17 Q Have you ever known a candidate to be
18 successful without Mr. Doulin's support while he was
19 chairman?

20 MR. PLATZMAN: I am going to object to that.

21 THE COURT: Sustained.

22 Q How long have you been active in Republican
23 politics in Orange County?

24 A Approximately twenty years.

25 Q And have you attended these conventions?

1 mkas5
2 A Yes, sir.

3 Q Have you held any positions before?

4 A Committeeman, member of the executive committee.

5 Q How long have you held those positions?

6 A I have been a committeeman for, I would guess,
7 approximately fifteen years, except for the period of time
8 when I was elected district attorney. I felt there was a
9 conflict and I resigned because I was elected by all the
10 people and I felt there would be a conflict.

11 Q How long have you served on the executive
12 committee in Orange County?

13 A About eight years, maybe ten.

14 Q During the time that you have been active,
15 both as a committeeman and as a member of the executive
16 committee, have you ever known a candidate to be successful
17 in the convention without Mr. Doulin's support?

18 MR. PLATZMAN: I object to that.

19 THE COURT: Overruled.

20 A No.

21 MR. SCHWARTZ: May I have a moment, your Honor?

22 THE COURT: Yes.

23 (Mr. Schwartz examines)

24 (Mr. Schwartz hands document to the witness)

25 Q Mr. Cohen, I want you to refer back to the

1 Monell case, and direct your attention to the exhibits I
2 have placed before you. They have been previously marked
3 Exhibits 2, 2-A, -B and -C. I do not want you to read them
4 aloud but I would like you to look at the cover of Exhibit 2,
5 and then all of Exhibits 2-A, -B and -C, and tell me when
6 you are finished looking at them.
7

8 A (Examining) Yes, sir.

9 Q Do you recall earlier in your testimony I asked
10 you whether after the first sentencing in the Monell case
11 on March 5, do you recall anything else happening in
12 connection with that sentence?

13 A No, sir, I do not.

14 Q You recall me asking you that?

15 A Yes, sir.

16 Q And that was your answer, was it not?

17 A Yes.

18 Q Having looked at these exhibits, does that
19 refresh your recollection at all?

20 A No, sir. These are not my records.

21 Q Well, do they refresh your recollection?

22 A No.

23 Q Finally, Mr. Cohen, in connection with the Monell
24 case, did anyone at any time from outside the district
25 attorney's office attempt to influence your judgment in this

1 mkas7 Cohen - direct 168
2 case?
3 A Influence my judgment?
4 Q Yes.
5 A No, sir.
6 Q Other than the defense attorney?
7 A Pardon me?
8 Q Other than the defense attorney in his case?
9 THE COURT: Doing his job.
10 THE WITNESS: Doing his job -- yes -- no,
11 absolutely not.
12 MR. SCHWARTZ: I have no further questions.
13 CROSS-EXAMINATION
14 BY MR. PLATZMAN:
15 Q Mr. Cohen --
16 A Yes, sir.
17 Q -- you were a committee member of the Republican
18 party of Orange County for a long time, were you not?
19 A Approximately fifteen years, sir.
20 Q Except for the interval that you were district
21 attorney.
22 A That is correct.
23 Q And you were also a member of the executive
24 committee?
25 A For a period of time, yes, except for that same

period of time.

Q And as a member of the committee, were there occasions when you were asked to endorse people for a particular office?

A Yes, sir.

Q And wasn't that true about everybody who was on the committee, or particularly the executive committee?

A Yes, sir, that is the way our country runs.

Q Do you recall, Mr. Cohen, when at that time Mr. Ingrassia and Mr. Kennedy were vying for position of assemblyman, to be nominated by the Republican party?

A Yes.

Q And do you remember that Mr. Doulin supported Mr. Kennedy?

A Yes.

Q And do you remember whom the committee voted for?

A Mr. Ingrassia.

Q So the committee is the one that has the final power, isn't that true?

A No question.

Q No matter who makes the recommendation.

A I agree.

Q And this is true in any organization that you

had experience with, and it is also true in the Republican party.

A Yes.

MR. SCHWARTZ: Objection to any organization.

THE COURT: He has answered it. I don't know that we can do much about it at this time. I think the form of the question was improper but I will let the answer stand.

Q Now when you were seeking -- I withdraw that question.

When were you first elevated to the position of assistant district attorney?

A When did I first get it?

Q Yes.

A 1955.

THE COURT: January 1st, if I recall your testimony.

THE WITNESS: Yes.

Q And did there come a time when you stated that you would like to be the district attorney?

A Yes, sir.

Q And when did that take place?

A As soon as I knew that Mr. Ingrassia was going to be Judge Ingrassia. He was then district attorney.

Q That was in early '71, is that right?

1 mkas
2 A Late '70 or early '71.

3 Q And you stated that you went to see Mr. Doulin.

4 A I can't say -- I did not say I went to see him.
5 I don't know whether I called him on the phone or I went to
6 see him, but I did talk to him about it.

7 Q You had been in the district attorney's office
8 about fifteen years around that time --

9 A Yes.

10 Q -- is that right?

11 A Yes.

12 Q And your natural competitors would be others who
13 were in the office, is that true?

14 A Yes, I guess.

15 Q And who were those competitors?

16 A Andrew Mauriello and Abraham Weissman.

17 Q And your service had been for fifteen years.
18 What was the service of Mr. Mauriello in the office?

19 A Approximately ten.

20 Q And how many years had Mr. Weissman been in the
21 office?

22 A At that time I would guess about three or four
23 or five.

24 Q So that from the point of view of seniority of
25 service you were the number one competitor, is that true?

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2 A I would like to think so, yes.

3 Q And you felt you were entitled to that job.

4 A I did.

5 Q Otherwise you wouldn't have asked Mr. Doulin

6 for it.

7 A That is correct.

8 Q Now, did you ask other members of the committee

9 to support you?

10 A Absolutely.

11 Q So that you went to Mr. Doulin, and whom else did

12 you go to?

13 A Everyone I knew.

14 Q To everybody on the executive committee, was it

15 not?

16 A Yes.

17 Q And you felt, as you testified on direct

18 examination, that you had the support of -- sufficient

19 support; is that what you said?

20 A I felt I had a good deal of support.

21 Q And that was gleaned from the result of the

22 conversations you had with all the members of the

23 executive committee.

24 A With many members of the committee I had

25 approached.

1 Q Yes, certainly with respect to the executive
2 committee.
3

4 A Yes, but they are bound by their own committees,
5 too.

6 Q True, and then in addition to speaking to various
7 members of the executive committee in your anxiety to get
8 this position you also spoke to members of the committee
9 who were members of the executive committee.

10 A Yes, sir.

11 Q And asked for their support.

12 A Yes.

13 Q Is it not a fact, Mr. Cohen, if there was a
14 contest this would eventually have to go to the entire
15 committee for an election, isn't that true?

16 A For election or endorsement?

17 THE COURT: Nomination.

18 THE WITNESS: Nomination, yes.

19 Q When I say "election" I mean election within the
20 committee itself. An election would be held as to who would
21 be nominated.

22 A For the endorsement.

23 THE COURT: Well, there are two steps, they're
24 not -- nomination with party designation, and then election
25 by the general public which would result in yours, or someone

1 else being given the office.

2 THE WITNESS: In this particular case, Judge,
3 under those guidelines there would be three. Since I was
4 acting district attorney, there would have to be a
5 recommendation from the executive committee to the
6 Governor for possible appointment for the interim term until
7 the election. There would then have to be a party
8 convention for the endorsement, and finally the election
9 in November.

10 Q So that there were two problems involved:
11 One, Judge Ingrassia became a judge just about that time
12 but you still had to next November to the election.

13 A That is correct.

14 Q So there would have been a vacancy and you were
15 aspiring to the post of district attorney until election.

16 MR. SCHWARTZ: Objection.

17 A No, I was acting as district attorney by
18 operation of law unless the Governor superseded me by
19 making somebody else. I was the district attorney.

20 Q That did not happen.

21 A The Governor did not appoint anybody and I
22 remained as district attorney.

23 Q But ultimately the selection of a nomination by
24 the Republican party was in the hands of the entire committee.
25

1 mkas
2 A At the nominating convention.

3 Q At the nominating convention.

4 A Yes.

5 Q And in order to insure your support at the
6 nominating convention, in case there was a contest you went
7 to as many members of the executive committee and the
8 members of the committee as you could.

9 A Yes, sir.

10 Q How many members are there in the executive
11 committee?

12 THE COURT: "Were there" in early 1971.

13 MR. PLATZMAN: Yes, your Honor. I would like to
14 correct the question.

15 Q Approximately.

16 A Somewheres between twenty-five and thirty.

17 Q And how many committee members from the entire
18 county?

19 A In 1971?

20 Q Approximately.

21 A I'd have to say between 350 and 400 -- I don't
22 know exactly. Several election districts have been
23 created since that time, and the number of committeemen
24 have gone up. Today it is 400 and something.

25 Q And in your experiences as a member of the

1 committee and also the executive committee, there were
2 from time to time many situations where there were contests
3 and many situations where there were no contests.
4

5 MR. SCHWARTZ: Objection to the form of the
6 question, your Honor.

7 THE COURT: Sustained.

8 Q Well, what instances were there when there were
9 contests and what instances were there when there were no
10 contests?

11 MR. SCHWARTZ: Objection -- the same question.

12 THE COURT: Yes, it is; sustained.

13 Q Well, can you tell us, Mr. Cohen, whether over
14 a period of time in your experience, in your serving on the
15 committee and also the executive committee there were
16 periods when there were contests between candidates seeking
17 nomination.

18 A I have to answer that "yes."

19 Q And there were also many times when there were
20 no contests.

21 A Yes.

22 Q To your knowledge and experience in the function-
23 ing of political parties, is this uncommon?

24 A No.

25 Q Now, let us get to the Monell case. You were the

1 attorney representing the State at the time of the sentence
2 of Mr. Monell on March 5th?
3

4 A I was the person in court, yes, sir.

5 THE COURT: Representing the People of the
6 State of New York.

7 THE WITNESS: Yes, sir.

8 Q And Mr. Shapiro, the attorney for the Legal Aid
9 Society, was representing Mr. Monell.

10 A Yes, sir.

11 Q And did you take any position with respect to
12 the sentence?

13 A Not in open court.

14 Q Or did you take any not in open court?

15 A I cannot answer that. So far as I know --

16 Q Did you ever --

17 THE COURT: He did not finish his answer.

18 MR. PLATZMAN: I'm sorry.

19 THE COURT: Give him a chance.

20 "So far as I know" -- I believe you said that
21 much.

22 A (Continued) So far as I know I made a notation
23 on the inside of the cover of the probation report, after
24 reading it, after reviewing the file a few days before the
25 sentencing, that was the first time -- not the first time

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but that was the first time I had thoroughly gone through the file and read the probation report and saw their recommendations and made a decision of my own. From that time to this I haven't seen the file.

Q Did you ever have any discussion before the sentencing date with anyone concerning a recommendation for sentence?

A You mean did anybody ask me to do anything?

Q Yes.

A No, sir.

Q Did you ever have any talk with Mr. Doulin about getting a sentence that he might have designated, or anything in connection with that sentence?

A You are asking me if Mr. Doulin asked me to do anything for this defendant?

Q Yes.

A No.

Q Did any member of the Monell family speak to you and ask you about the sentence that was to be imposed, or speak to you concerning the sentence to be imposed on Mr. Monell?

A They called me before sentence?

Q Yes, before sentence.

A No, sir.

1 Q Did anyone talk to you before the sentence
2
3 concerning the sentence, the expected sentence of Mr. Monell?

4 A No, sir.

5 Q Now when you suggested that he be sentenced
6 under the old statute, which provided for zero to 2-1/2
7 years -- is that correct?

8 A He pleaded guilty to attempted assault in the
9 second degree. The punishment for assault in the second
10 degree under the old law is a maximum of five years in
11 State's prison. The attempt under the old law automatically
12 cut the sentence in half. It is an old law case, 8868,
13 which automatically made it a 68 case. Where I did not
14 know and where I made the mistake is that he couldn't be
15 sentenced under the old law but according to the new one.

16 Q So according to the old law there was a maximum
17 of five years and at that time --

18 THE COURT: No, there was a maximum of 2-1/2
19 years because there was an attempt.

20 THE WITNESS: An attempt.

21 Q An attempt; I see.

22 THE COURT: Is that correct?

23 THE WITNESS: That is absolutely correct.

24 MR. PLATZMAN: Thank you, your Honor.

25 Q Now, did it develop that this was erroneous?

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Cohen - cross

2 A Yes.

3 Q And what did that do to the sentence?

4 A He had to come back for resentence.

5 Q And the reason he had to come back was only
6 because of the erroneous nature, is that correct --

7 MR. SCHWARTZ: Objection.

8 Q -- of the sentence?

9 MR. SCHWARTZ: Objection.

10 THE COURT: Sustained.

11 MR. PLATZMAN: May it please the Court, I would
12 like to suggest this is croes-examination.

13 THE COURT: Oh, it is. I do not mind the leading
14 nature of the question, but I think it is improper in form.

15 Q Do you know any reason other than that, other
16 than the fact that --

17 I withdraw the question.

18 Do you know of any reason other than the fact
19 that this sentence was illegal that the man Monell would
20 have had to have been resentenced?

21 MR. SCHWARTZ: Objection to the form "would
22 have."

23 THE COURT: I think you may elicit the
24 information you require if you put a different form of
25 question.

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2 Q Mr. Cohen, as a result of the fact that the
3 sentence was illegal, the sentence of March 5th, a re-
4 sentence was required.

5 A Yes.

6 Q Was there any other reason that resentencing
7 was required?

8 THE SCHWARTZ: If he knows, your Honor.

9 THE COURT: Of course if he knows.

10 A Not that I know.

11 Q Well, do you know from the file or from any other
12 factor within your possession or knowledge as to whether or
13 not there were other reasons for resentence?

14 A At this point in time?

15 Q Yes.

16 A Yes.

17 Q What was that?

18 A They wouldn't take him at Sing Sing.

19 Q In other words, it was the Department of
20 Correction that discovered the error, is that correct?

21 A Yes, sir.

22 Q And as a result of the discovery of the error
23 he was sent back for resentencing.

24 A No -- this is what I now understand, yes.

25 Q Do you know of any other reason why that took

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Cohen - cross

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place?

A Not to my knowledge.

Q Did you deliberately ask that this man be
sentenced under an illegal sentencing?

A Will you repeat that?

Q Did you deliberately ask that this man be
sentenced to an illegal sentence so that he could be
resentenced?

MR. SCHWARTZ: Your Honor --

A No.

Q That is what I want to know.

THE WITNESS: (To the Court) I am sorry.

THE COURT: That is all right.

Q Did you expect, Mr. Cohen, that somebody was
now going to correct the sentence and for that reason you
asked that the sentence be imposed upon this man of an
illegal character?

MR. SCHWARTZ: Objection.

THE COURT: Sustained.

Q It was purely an accident, was it not?

MR. SCHWARTZ: Objection.

THE COURT: Sustained.

Q Well, was it an accident?

A It was a goof on my part -- that is what it was.

2 Q Nothing else; is that correct?

3 A Yes, sir.

4 THE COURT: Mr. Cohen, at that time in March of
5 1971 was there a procedure in the state of New York where
6 at any time, subsequent to a sentence being imposed,
7 assuming it to be a legal sentence, a county court judge
8 would bring the defendant back before him for a resentence,
9 modification, reduction or whatever?

10 THE WITNESS: Only on a coram notice, an appeal
11 or a stay. There was no procedure to modify a sentence once
12 he had been committed to the Department -- excuse me, sir.

13 THE COURT: To the Department of Correction?

14 THE WITNESS: To the Department of Correction,
15 yes.

16 Q Mr. Cohen, how long have you known Mr. Doulin?

17 A I would guess fifteen years, maybe a little less,
18 since he has been county chairman, maybe twelve or fifteen
19 years.

20 Q And during these fifteen years, Mr. Cohen,
21 did Mr. Doulin ever come to you and ask you to fix a case?

22 A No, sir, in no way.

23 Q Did Mr. Doulin ever in fifteen years come to you
24 and tell you to exercise your judgment different from what
25 you believed to be your correct judgment in a particular case

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Cohen - cross

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or prosecution?

A No one did, no one would and no one would dare.

Q And if that had happened you would have reported him, wouldn't you?

A I would have indicted him.

Q Well, if Mr. Doulin had offered it to you and made a request of that sort would you have reported him?

A I would have indicted him.

Q Did Mr. Doulin ever offer you any money in connection with any litigation, prosecution of any case that you ever were connected with?

MR. SCHWARTZ: Objection, asked and answered.

MR. PLATZMAN: No, I don't think so.

THE COURT: Well, let us ask it broadly and get it in the record.

Did Mr. Doulin ever give you any money?

THE WITNESS: Absolutely not. I resent the question.

Q During the years that you have known Mr. Doulin have you known of his reputation for honesty and integrity in the community?

A Yes.

MR. SCHWARTZ: Your Honor, may we approach the bench?

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Cohen - cross

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THE COURT: Yes, indeed.

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You are opening the door, you know, counsel,

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and I think we had better step to the side bar.

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(At the side bar)

MR. SCHWARTZ: The reason I requested a side bar is simply to know, if Mr. Platzman is going to make Mr. Cohen his own witness, I know at this point so I know how to approach my redirect.

MR. PLATZMAN: I think I am going to reserve character witnesses for my defense.

THE COURT: In other words, you intend at this point to drop this line of inquiry?

MR. PLATZMAN: Okay.

(In open court)

Q Mr. Cohen, just one or two additional questions.
Did there come a time when you were seeking an office --

A Pardon?

Q Did there come a time when you were seeking office within the Republican committee itself?

A Within the Republican committee?

Q Yes.

THE COURT: You mean a party office?

MR. PLATZMAN: Yes.

A A couple of years ago.

Q What were you seeking at that time?

A Vice-chairman.

Q And did you have any contest?

2 gwmch

Cohen-cross

A Yes.

Q And who was your opponent?

A Clark Van Fleet.

Q And you had the backing of certain members of the committee?

A Yes.

Q Their support.

And did that include Mr. Doulin at the time?

A No.

Q Mr. Doulin supported your adversary; is that right?

A Yes, sir.

Q Did there also come a time recently when there was a contest for chairman of the executive committee?

A There was a contest for chairman of the entire Orange County committee as recently as three months ago, two months ago.

Q And Mr. Doulin --

THE COURT: About two months ago, the witness said.

Q Who was seeking that office two months ago?

A Mr. Doulin and Mr. Andrew Mauriello.

Q Was there a contest?

A Yes, sir.

3 gwmch

Cohen-cross

Q And an election within the committee as to who was to be the chairman?

A Yes, sir.

Q And this was the entire committee; is that correct?

A Yes, sir.

Q And did you support Mr. Doulin?

A No.

Q Did you nominate Mr. Mauriello?

A Pardon?

Q Did you nominate Mr. Mauriello?

A I did.

Q And Mr. Mauriello ran against Mr. Doulin?

A Yes.

Q And there was an election, isn't that correct, within the committee?

A That's how he lost.

Q And Mr. Mauriello lost; is that right?

A Yes.

Q And this was by vote of the entire committee?

A On the third ballot by about, I think, ten votes. Is that explicit enough?

MR. PLATZMAN: That is all.

1 4 gwnch

Cohen-redirect

2 REDIRECT EXAMINATION

3 BY MR. SCHWARTZ:

4 Q Mr. Cohen, you told us that you ran for vice-
5 chairman of the Republican Party?

6 A A little over two years ago, yes.

7 Q And you were not supported by Mr. Doulin?

8 A No.

9 Q Did you win?

10 A No.

11 Q You were asked on cross-examination whether you
12 had ever made a recommendation in the Monell case, either
13 in open court or any other time.

14 Do you recall being asked that?

15 A Yes.

16 Q And you told us that you reviewed the probation
17 report prior to sentencing?

18 A In every case where I was handling sentence you
19 go over the file and read the probation report, and see if
20 you are going to write anything or not write anything.

21 Q And what did you write on that probation report
22 after reviewing it?

23 MR. PLATZMAN: We went through this on direct
24 examination. He said that he said that, which was a statute,
25 2-1/2 years. He didn't remember whether it was his

1 5 gwmch

Cohen-redirect

2 recommendation.

3 THE COURT: You covered it on cross, and therefore
4 I will permit a brief inquiry.

5 THE WITNESS: What was the question?

6 THE COURT: Mr. Reporter, read back the question,
7 please.

8 (Record read)

9 A I wrote the judge's initials before whom it was
10 going to be handled, and I wrote 2-1/2 on the inside cover.

11 Q And do you recall now what that 2-1/2 meant?

12 MR. PLATZMAN: I will object to that. He
13 already testified to that.

14 MR. SCHWARTZ: I am trying to complete that one
15 point.

16 THE COURT: Overruled.

17 A It either meant it was my opinion at that
18 time the maximum he could receive under what I believed the
19 law to be was 2-1/2 years maximum, or that I felt he should
20 get time and the most he could get was 2-1/2. But to tell
21 you exactly what it means at this point, I can't.

22 MR. PLATZMAN: That being so, this is just
23 speculation, and I ask that this be stricken.

24 THE COURT: The jury has just heard what the
25 witness' recollection is. I think the main point to be made

6 gwmch

Cohen-redirect

here is that you do not recall communicating any sentencing recommendation to the sentencing judge. Is that correct?

THE WITNESS: Not in open court.

Q Do you remember being asked on cross-examination whether anyone ever contacted you in connection with the Monell sentence?

A Before he was sentenced, he was talking about.

Q Do you recall any contact?

A Do I recall the question?

Q Yes.

A The answer is "yes." I recall the question.

Q Do you recall whether anyone contacted you about the Monell sentence after the sentence?

A Yes.

Q And when was that?

A Within a couple of days after the sentence.

MR. PLATZMAN: Once again --

THE COURT: You opened the door, counsel. I listened and you tried to back out of it, but I fear you opened the door.

MR. PLATZMAN: May it please the Court, my questions concerned themselves with prior to it, nothing else.

THE COURT: You came back prior after you had asked the broad and open question. That's my recollection

1 7 gwmch

Cohen-redirect

2 of the record.

3 If you want, I will have the reporter go back
4 and read the initial question, because I have my own recol-
5 lection, ladies and gentlemen, but it's your recollection
6 that governs.

7 You may proceed within limits.

8 Q You were contacted by someone; is that correct?

9 A Yes.

10 Q When was that?

11 A Within two or three days after the sentencing.
12 I cannot tell you exactly.

13 Q Without telling us what was said, what was the
14 nature of the contact? Was it in person or otherwise?

15 A Telephone.

16 THE COURT: By telephone.

17 Q Can you describe whether the caller was male or
18 female?

19 A It was a woman.

20 Q And can you describe to us the nature or the
21 quality of what she was saying, the tone of her voice?

22 MR. PLATZMAN: I am still objecting to this entire
23 line of testimony.

24 THE COURT: He still hasn't asked about what
25 the person said, and I don't intend to change my ruling on

1 8 gwmch

Cohen-redirect

2 that.

3 But you did get into the subject and I am going
4 to permit a certain degree of redirect.

5 Would you describe her voice? Was it calm, cool
6 and collected, or was it less so?

7 THE WITNESS: It was very angry. I would go so
8 far as to say it was berserk, to the best of my recollection.

9 THE COURT: In any event, she sounded angry,
10 is that right?

11 THE WITNESS: Hollering, yes.

12 Q And did you say anything to that person?

13 A Yes.

14 Q What did you say?

15 MR. PLATZMAN: I will object to that.

16 THE COURT: What he said, I will let him say it.

17 After she said whatever she said, and I don't
18 want you to go into what she said, what did you say?

19 THE WITNESS: In substance, because it was a very
20 short phone call, and to the best of my recollection, what
21 I said was "Who is that? Who is he? Who is that? Nobody
22 tells me what to do. Nobody runs this office. I didn't
23 make you any promises," and I hung up, because I was irate.

24 MR. PLATZMAN: I would like to renew my objection.
25 I ask this be stricken out. I consider the answer highly

1 9 gwmch

Cohen-redirect

2 prejudicial and I ask there be a mistrial declared.

3 THE COURT: The statements of the witness are
4 received. The motion is in all respects denied.

5 MR. SCHWARTZ: I have no further questions, your
6 Honor.

7 MR. PLATZMAN: No other questions.

8 THE COURT: You are excused.

9 (Witness excused)

10 THE COURT: Ladies and gentlemen, this would be
11 a good opportunity for us to take our late morning recess.
12 We will take a ten-minute recess.

13 Please do not discuss the case among yourselves.
14 Keep an open mind on all facets of the case until it has
15 been concluded, and I give it to you following my charge.

16 The jury is excused.

17 (The jury left the courtroom.)

18 MR. PLATZMAN: May we have that portion of the
19 cross-examination with respect to this questioning reread.
20 I would like to point out to the Court that irrespective
21 of the exact wording, I did attempt to clarify what I was
22 seeking from the witness, and I was questioning him solely
23 as to what, if any, conversation he had prior to the
24 sentencing, and that was the nature of my question.

25 Now, this may not consist of one question but a

1 10 gwmch

2 group of questions, and the total approach of this group
3 of questions was to ask him about what transpired prior
4 to the sentencing.

5 THE COURT: My recollection -- as I said to the
6 jury it is there recollection on the matter which will
7 govern -- is, number one, that you started with a general
8 question and then, recognizing probably your problem, you
9 then cut back and asked about things which happened before
10 sentencing, but, as my ears heard your initial inquiry
11 in this area, it was general.

12 But there is another point to be made here. As
13 far as I am concerned, on cross-examination, you got into
14 the area itself, and once you got into some conversation,
15 I think the latitude which I should afford on cross-
16 examination would permit further inquiry to be made on
17 redirect examination.

18 So, I say, first, I think you opened the door
19 clearly, as I have indicated, but assuming arguendo, and
20 I don't concede this, that you never said anything about
21 conversations or approaches made to this witness, the
22 last witness, at any time other than before sentence, I still
23 think that it was proper cross-examination.

24 Furthermore, I did not permit any inquiry relative
25 to what the woman herself said, only as to what this

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2 witness, who was subject to cross-examination, responded.

3 Mr. Schwartz, do you want to be heard?

4 MR. SCHWARTZ: No, your Honor. I have nothing
5 further to add.

6 My recollection of the broadness of the question
7 is in accord with yours.

8 THE COURT: The transcript, of course, will be
9 available to you and you can point it out to me, and if
10 I am in error on this and you wish me to make any corrective
11 statement to the jury following your pointing out some
12 error to me, I will consider any application you choose to
13 make.

14 MR. PLATZMAN: What I am further referring to
15 is that, even though there was a restriction with respect
16 to the statements of the witness in response to what was
17 being said to him, that testimony was more than revealing
18 as to what anyone else may have been saying on the other
19 side, particularly in light of the background of what has
20 been appearing on the trial, and jurors are not stupid
21 not to recognize that if that was the nature of his
22 response, as to what her statement may have been.

23 THE COURT: I recognize your point.

24 As I say, I think the redirect examination which
25 was allowed was appropriate in view of the cross-examination.

12 gwmch Barkley-direct

MR. PLATZMAN: All right.

THE COURT: You have made your objection to that
and I have ruled on it.

(Recess)

(In open court; jury present)

MR. JOSSEN: Your Honor, the Government calls
Hugh Barkley.

H U G H E. B A R K L E Y, called as
a witness by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION.

BY MR. JOSSEN:

Q Mr. Barkley, I will ask you to keep your voice
up so that everyone in the courtroom can hear you.

How are you employed?

A I am a supervisor for the Orange County probation
department.

Q How long have you been a supervisor?

A Since 1968.

Q Before that time, how were you employed?

A I was a probation officer for the same probation
department.

Q Would you tell us where the probation department
is physically located in Orange County?

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13 gwmch

Barkley-direct

A It's presently located in the Orange County Government Center Building in the judicial wing in Goshen, New York.

Q Are any other offices located in that same wing of the building?

A Yes. Most of the county departments are located in that building, judicial wing, the courts, district attorney's office, Legal Aid Society, and other county departments.

THE COURT: Where was the probation department located in early 1971?

THE WITNESS: In the same building.

Q Mr. Barkley, would you please tell us your responsibilities and duties as a supervising probation officer

A Yes. I have the responsibility for training probation officers, for reading probation investigation reports, which are conducted and produced by the probation officers, and consulting with them about problems they may encounter in the investigation and supervision of probationers and of defendants.

I also attend sentencing in the county court, and presentence conferences.

Q Would you tell us what a presentence conference is?

1 14 gwmch

Barkley-direct

2 A Yes. That is a conference with the sentencing
3 judge, usually held on the morning of sentence, in which I
4 am present, the probation officer who conducted the inves-
5 tigation is present, and the judge, and sometimes the
6 district attorney or the assistant district attorney.

7 Q Were such conferences held in 1971?

8 A Yes.

9 Q Do you know whether such conferences are held
10 in every case?

11 A I would say most every case, yes.

12 Q Mr. Barkley, let me direct your attention to the
13 year 1971.

14 Were you employed in the same capacity that year?

15 A Yes, I was.

16 Q Would you tell us what was the practice of your
17 office with respect to the maintaining of official records
18 in 1971?

19 A All information, all papers, records which we
20 had with regard to a case were maintained in a case folder.
21 All information regarding the case.

22 Q Would you tell us what type of records you would
23 have?

24 A We would have records from the district attorney's
25 office, police records, school records, psychiatric, medical,

1 15 gwmch Barkley-direct

2 employment, testimonials, character references.

3 Q Mr. Barkley, directing your attention to 1971,
4 did your office at that time undertake an investigation
5 about a man named Richard Monell?

6 A Yes, that is correct.

7 Q For what purpose was that investigation undertaken?

8 A We were ordered by the Court to investigate
9 the defendant who had pled guilty to a crime.

10 Q Mr. Barkley, I place before you what has previously
11 been marked as Government's Exhibit 3 for identification.

12 Can you identify that?

13 A Yes. This is our folder, probation folder, and
14 case record on Mr. Monell, Richard George Monell.

15 Q Did you have occasion to examine that file in
16 1971?

17 A Yes, I did.

18 Q Are you familiar with the probation department's
19 investigation in the case of Richard Monell?

20 A Yes, I am.

21 Q How are you familiar with that investigation?

22 A I was the supervisor of the probation officer
23 who conducted the presentence investigation, and it was my
24 duty to read the report, to approve it and to sign it,
25 which I did.

1 16 gwmch

Barkley-direct

2 Q Who was the probation officer who conducted the
3 Monell investigation?

4 A Mr. Bernard Howard.

5 Q Is Mr. Howard still employed by the Orange County
6 probation department?

7 A No. He is deceased.

8 Q Mr. Barkley, I ask you to examine the contents
9 of Government's Exhibit 3 for identification and tell us
10 whether you see that the documents contained therein are
11 documents which you recall seeing there in 1971?

12 A Yes. Some of them are, but some of them are
13 also alter.

14 Q Are those later documents also in connection
15 with the Monell case?

16 A Yes, sir, they are.

17 Q Now, Mr. Barkley, would you describe for us the
18 function and nature of a probation investigation?

19 A The function and nature of a probation investigation
20 is primarily as an aid in sentencing to the Court, and the
21 probation investigation would entail a complete investigation
22 of a defendant who has been found guilty, either by verdict
23 of the jury or by his plea.

24 It would entail investigation of social background,
25 his legal history, just about everything about this person's

1 17 gwmch Barkley-direct

2 live which we could find out.

3 Q What type of things would a probation officer
4 do to pursue his investigation?

5 A The probation officer would immediately interview
6 the defendant and he would obtain statements from him
7 regarding his social, legal history. He would verify this
8 information. He would contact agencies such as police,
9 sheriff's departments, district attorney's office, employers,
10 schools, witnesses, victims, if any, and after getting
11 this information he would evaluate it, analyze it, and then
12 he would write a report.

13 Q Mr. Barkley, I am placing before you what has
14 previously been marked as Government's Exhibit 3-A for
15 identification.

16 Can you identify this?

17 A Yes. That is our probation presentence report
18 conducted by my department.

19 Q Is that a copy of your report?

20 A This is an original.

21 Q Will you tell us how you can identify it?

22 A I can identify it by the format, of course, and
23 by my signature and Mr. Howard's signature.

24 Q I direct your attention to the front cover of
25 Government's Exhibit 3-A for identification and the inside

1 18 gwmch

Barkley-direct

2 back cover of Government's Exhibit 3-A.

3 There appears to be some penciled handwriting on
4 both of those places. Do you recognize that handwriting,
5 without telling us whose it is?

6 A Yes, I do.

7 Q Will you tell us how you recognize that hand-
8 writing?

9 A I have seen it many times before.

10 Q Whose handwriting is it?

11 A Judge Isseks'.

12 Q Mr. Barkley, what, if anything, was done with
13 the probation report after it was prepared by the officer
14 and approved by you?

15 A Then two copies would be sent out, one to the
16 district attorney's office and one to the sentencing judge.

17 Q Upon completion of the sentencing, what would
18 happen, if you know, to the judge's copy of the report?

19 A That would be returned to us.

20 Q Mr. Barkley, in 1971, what, if anything, was the
21 practice of your office with respect to making explicit
22 sentencing recommendations in presentence reports?

23 A We did not have, to the best of my knowledge, an
24 official policy with regard to making recommendations.
25 This was left largely to the individual probation officer,
whether he felt like making a recommendation or not.

2 MR. JOSSEN: May I have a moment, your Honor?

3 (Mr. Jossen confers off the record)

4 MR. JOSSEN: Your Honor, at this time the
5 government offers into evidence Exhibit 3 and Exhibit 3-A.

6 MR. PLATZMAN: Objected to, if it please the
7 Court. I do not think we should try that case all over
8 again.

9 THE COURT: I gather your objection does not go
10 to the authenticity of the material which has been shown
11 to the witness, or the fact that they might well be and
12 should be considered records kept in the regular course of
13 business, but does go to the relevance and materiality.

14 MR. PLATZMAN: Yes, your Honor. I have no
15 objection to the authenticity question. I will waive any
16 requirements as to further foundation or anything of that
17 sort. I am not interested in any technical thing. I am
18 interested in taking a position that this file is not
19 relevant.

20 THE COURT: Essentially I would suggest that
21 it is the same objection made to Government's Exhibit 1,
22 which was the district attorney's office file.

23 MR. PLATZMAN: Yes, your Honor.

24 THE COURT: Very well. Same ruling.

25 (Government's Exhibits 3 and 3-A received in

evidence.)

BY MR. JOSSEN:

Q Mr. Barkley, in your several years as a probation supervisor, how many probations reports have you reviewed?

A I would say approximately several thousand.

Q How many such reports were written by Mr. Bernard Howard that you had occasion to review?

A Maybe between fifty and one hundred.

Q Do you know whether Mr. Howard had a particular practice with respect to including specific sentencing recommendations in his reports?

MR. PLATZMAN: I am going to object to that.

THE COURT: Sustained.

Q Mr. Barkley, based upon your experience as a probation officer and your review of several thousand probation reports, do you have an opinion as to the sentencing provision made in the body of the report concerning Exhibit 3-A in evidence?

MR. PLATZMAN: I will object to that.

THE COURT: You want him to cover the report and give his opinion?

MR. JOSSEN: That is correct, your Honor.

May I point out to your Honor that this witness approved the report at the time that it was written.

1 THE COURT: Yes, I am aware of that.

2 I am going to sustain the objection.

3 I suggest that you go about it a little
4 differently -- find out what is in the report, what if
5 anything was conveyed to the judge in writing or on any
6 pre-sentence conference. Do it that way.

7 MR. JOSSEN: Fine.

8 THE COURT: That would be a preferable manner
9 in which to proceed.

10 BY MR. JOSSEN:

11 Q Mr. Barkley, was there a pre-sentence conference
12 before the sentencing of Richard Monell?

13 A Yes.

14 Q Were you present at that conference?

15 A Yes.

16 Q Who else was present at the conference?

17 A The judge, of course, and I believe Mr. Bernard
18 Howard was there, and there may have been an assistant
19 district attorney present at the time.

20 Q Mr. Barkley, without telling us what if anything
21 was said at that conference, what if anything specific was
22 said, was any recommendation communicated to the judge at
23 that pre-sentence conference, as best you can recall?

24 A Yes.

1 Q Do you recall whether any specific reference
2
3 was made to the pre-sentence report at that time?

4 A I cannot honestly recall that. You mean by
5 the judge?

6 Q From either the judge or anyone else at the
7 conference.

8 A I don't recall.

9 MR. JOSSEN: May I have a moment, your Honor.

10 THE COURT: Yes.

11 (Mr. Jossen confers with Mr. Schwartz off the
12 record.)

13 Q Mr. Barkley, did you have occasion to review the
14 probation report before you approved it?

15 A Yes, I did.

16 Q And did you have occasion to discuss the report
17 with Mr. Howard at that time?

18 A Yes, I did.

19 Q Did you formulate an opinion at that time with
20 respect to the conclusion of the report?

21 THE COURT: Just answer "yes" or "no."

22 A Yes.

23 Q I am going to read to you from Exhibit 3-A in
24 evidence and ask you whether you had formulated an opinion
25 on the basis of what I have read to you, and whether you can

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give us an opinion with respect to the conclusion of this report.

MR. PLATZMAN: Well, I am going to still object to this, your Honor, and particularly renew my objection with respect to that portion of the file which contains or could possibly contain a recommendation or opinion of this witness.

THE COURT: Well, the document is in evidence. Counsel could read it in any event. I am going to let him read it; then I am going to have him put the question that he wants in the first instance to ask, yes or no, and then I will give some further thought to whether this witness should be permitted to give his opinion at this time, because I must say I regard the sentencing judge and his report at the conference as the most important consideration, but that is up to the jury to determine.

You may read from the document in evidence, or any part thereof, and of course counsel for the defendant may read any other portion that he wishes at an appropriate time.

MR. JOSSEN: Thank you.

Q From page 1: "Synopsis" --

"The subject has a long history of asocial behavior including assaultive acts. He has been classed by

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psychiatric examination as being a 'psychopathic personality,' and as a 'sociopathic personality, antisocial type.'

"Although these examinations were conducted some 11 or 12 years ago, and the instant offense was committed almost 3 years ago, the conclusions reached then appear to be still valid.

"The subject was previously" --

MR. PLATZMAN: Objection. We are having an opinion of the probation officer with respect to psychopathic conditions of a patient which would fall in the category of expert opinion of a physician or psychiatrist. I still renew my objection to the report as a whole and the danger of putting in an entire file which contains lots of matters which are not admissible in evidence.

MR. JOSSEN: Your Honor, this is an excerpt, a report in evidence.

THE COURT: This is a what?

MR. JOSSEN: These are excerpts from a report which is in evidence, and following my reading I intend to ask the witness questions. I think it is perfectly proper.

THE COURT: You may read from anything which is already in evidence. You can read portions of it, and if

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counsel wishes to read other portions he may do that.

I will rule on the question when he asks it.

To the extent that you have an objection at this point, the document has already been received in evidence, and I have ruled on it. Under the circumstances I am going to stand on my prior ruling and permit counsel to read. I am not so sure what I am going to do when he starts asking questions of this witness, and if you should wish to read any other portions of this report to the jury that you consider balancing or necessary, I will permit you do so.

Q (Continuing reading) "The subject was previously committed to prison, paroled from prison and returned to prison for violating his parole. He was in prison from 1957 to 1962, being sentenced from the Orange County Court on a charge of Assault 2nd Degree."

From paragraph 20 of the report:

"Despite subject's denials (which may be, in part, because the offense took place almost 3 years ago) in the instant matter, he did make a plea of guilty to Attempted Assault. From the circumstances surrounding the event, the charge could easily have been one of Murder."

MR. PLATZMAN: I object to this. I renew my objection again to this specific portion of it. It is

2 highly speculative and certainly very prejudicial.

3 THE COURT: Overruled.

4 Q (Continued reading) Paragraph number 13:

5 "Presenting Problems

6 "Although this marks only the second time the
7 subject has been before the Orange County Court, he has
8 been more or less a constant source of irritation to the
9 community, his family and legal officials since his early
10 teens."

11 Paragraph number 19:

12 "He has a long history of problems arising from
13 his propensity to alcohol and his assaultive nature."

14 Paragraph number 22:

15 "His attitude leaves the undersigned with the
16 impression that he will continue to behave as he pleases
17 regardless of the norms of society and regardless of legal
18 implications."

19 Now, Mr. Barkley, based upon the paragraphs
20 from Exhibit 3-A in evidence which I have read to you,
21 are you able to formulate an opinion with respect to the
22 conclusion of that report as to any sentencing position of
23 the probation officer?

24 (Mr. Platzman stands)

25 THE COURT: Sustained.

1 Q Mr. Barkley, did the Probation Department ever
2
3 receive unsolicited information from sources outside its
4 investigation?

5 A With regard to this particular investigation?

6 Q Well, let us start with any general investigation.

7 A Yes, we sometimes do.

8 Q What type of information would the Department
9 receive?

10 A We may get telephone calls, letters, testimonials
11 as to character.

12 Q What if anything was done on such an occasion?

13 A It was always put into the folder, the case
14 folder and kept as a part of the record, and it would be
15 brought to the attention of the sentencing judge.

16 Q Now, Mr. Barkley, did you personally ever
17 receive such information from any investigation?

18 A Yes, at times.

19 THE COURT: That would be in the form of letters,
20 and you say telephone calls?

21 THE WITNESS: Yes, sir.

22 THE COURT: Did you have a practice of
23 transcribing the telephone calls onto some memorandum?

24 THE WITNESS: Yes, your Honor.

25 Q Do you recall receiving any calls or letters in

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connection with Mr. Monell?

A No.

Q Mr. Barkley, let me direct your attention to March 5, 1971. Did you have any occasion on that date to be in court?

A Yes.

Q Which court was that?

A Orange County Court.

Q For what purpose were you there?

A For sentencing of Mr. Monell.

Q Were you there for any other sentencing?

A I don't recall if there were any others on the calendar that morning.

MR. JOSSEN: May I have a moment, your Honor?

THE COURT: Yes.

(Mr. Jossen confers off the record)

MR. JOSSEN: No further questions at this time.

MR. PLATZMAN: May it please the Court, I have not had an opportunity to go through this probation file. I think this might be an appropriate time to break, and during lunch I will be glad to go through this file and see if there is anything I would like to look at.

MR. JOSSEN: Whether it is convenient to the Court.

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THE COURT: I think I almost made a promise to the jury, if I remember correctly, ladies and gentlemen, I said an hour and fifteen minutes. It is just going on to 12:20. I would ask that you be back and ready to go, if it is convenient for you, at 1:30.-- we might be starting at 1:35, because I did tell counsel that you would have time for lunch, and on that basis, before the jury recesses for lunch, I would admonish you again, please, don't discuss the case amongst yourselves, don't remain in the presence of any other person or persons who may be discussing the case.

In the event you learn anything about this case from any source whatsoever outside of the courtroom, you are directed to report the matter to me at once the next time we are together.

Finally, keep an open mind on all facets of the case until it is concluded and following my charge.

The jury is excused. The jury is directed to return to continue hearing this case at 1:30 p.m.

Enjoy your lunch.

(Recess to 1:30 p.m.)

AFTERNOON SESSION

1:35 p.m.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen.

Call Mr. Barkley in, please.

H U G H E. B A R K L E Y, resumed.

THE COURT: You may cross-examine, Mr. Platzman.

CROSS-EXAMINATION

BY MR. PLATZMAN:

Q Mr. Barkley, do I gather on direct examination this morning you stated you were a supervisor since 1968?

A Yes, sir, that's correct.

Q And there was some period of time prior to 1968--

MR. PLATZMAN: I withdraw the question.

Q Had you been associated with the department prior to 1968?

A Yes, sir.

Q And for how long?

A From 1965.

Q And in what capacity?

A Probation officer.

Q As I recall, you testified that from time to time during the course of investigation you would receive testimonials?

1 2 gwmch

Barkley-cross

2 A That's correct, sir.

3 Q What do you mean by testimonials?

4 A We would receive telephone calls from people
5 recommending people to us. We might receive letters,
6 character references, things of that sort.

7 Q And they would be put in the file?

8 A Yes, sir.

9 Q And these would be from people who took a position
10 one way or another for or against a party?

11 A Not always, no. Sometimes they would be from
12 employers simply stating that the person is "in my employ
13 and he is a good worker and I need him back," things of
14 that sort.

15 Q You are not a psychiatrist or psychologist,
16 are you?

17 A No, sir.

18 Q And where psychiatric examinations are required,
19 they are usually performed by other people?

20 A That's correct.

21 Q And in this case there was a psychiatric examination?

22 A I believe so.

23 Q That was when?

24 A I believe the psychiatric reports that are
25 referred to within the body of the probation report were

1 3 gwmch

Barkley-cross

2 done at an earlier period of time. I believe the probation
3 officer quotes from the earlier reports.

4 Q What was the date of that last report?

5 A The last probation investigation report that we
6 did?

7 Q Yes.

8 A It was, I believe, '71.

9 Q I mean the date of the last report of a psychiatric
10 examination.

11 A I think they were done several years -- I am not
12 sure of the date -- several years prior to then.

13 Q How long ago, do you know?

14 A No, I don't.

15 Q I will show you the file and ask you to refresh
16 your recollection.

17 A It should.

18 (Documents handed to the witness.)

19 THE WITNESS: May I have a moment or two?

20 THE COURT: Yes, indeed.

21 (Pause)

22 A There was a Court-ordered psychiatric examination
23 in 1957 which is quoted in the body of the probation
24 investigation report.

25 Q Thank you.

1 4 gwmch

Barkley-cross

2 That was the last psychiatric examination?

3 A That I see here now, yes.

4 Q Did you also, or did Mr. Howard, in the course
5 of his duties, also obtain a statement of the defendant
6 as to his view of what had transpired?

7 A Yes.

8 Q Is that included in the report?

9 A Yes.

10 Q May I read this to you and see if it refreshes
11 your recollection as to what was stated concerning the
12 defendant?

13 THE COURT: You ought to exhaust his recollection.
14 If you want to read it, it is in evidence and you can read
15 it without a prefatory question.

16 MR. PLATZMAN: May I read it?

17 "Defendant was interviewed at the Orange County
18 probation department office in Goshen, New York, on
19 December 29, 1970. The defendant did not appear to take
20 seriously the present course of events.

21 "He said that he did not shoot anyone on the
22 night in question. According to him, he and his girl friend
23 were in the front part of the Sportsman's Grill on Ann
24 Street in Newburgh, while the victim and his girl friend
25 were in the rear section of the bar. He said that he and his

1 5 gwmch

Barkley-cross

2 girl were drinking with some friends, and he could hear
3 the victim arguing with his girl friend in the back part
4 of the bar. After a few minutes, the victim, the victim's
5 girl friend and another man left the bar. The subject did
6 not leave the premises."

7 The subject meaning the defendant, Mr. Monell.

8 "Shortly thereafter, the victim's girl friend came
9 running back to the bar saying that her boy friend had
10 been shot. Defendant said that he went to the doorway of
11 the bar and looked out, but did not leave the bar. He
12 said that he knows nothing of the details of the shooting.
13 See attached statement of the victim's girl friend.

14 "When asked why he should be accused of this
15 offense, as he did not leave the bar, he said that the
16 people who accused him are lying. He did admit to having
17 had a fight with the victim about a year prior to the instant
18 offense, but said that since that time he has always tried
19 to avoid the victim."

20 Q Is that the statement of the defendant regarding
21 his view of the occurrence?

22 A Yes.

23 Q This was before Judge Isseks when he sentenced
24 this defendant, was it not?

25 A That's correct, sir.

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Q And it was before Judge Isseks on both occasions?

A Yes, sir.

(Continued on next page)

1 Q And it was Judge Isseks that made the
2
3 determination as to what this man's sentence would be?

4 A Yes, sir.

5 Q Was the defendant, Mr. Monell, employed at that
6 time?

7 THE COURT: What time?

8 Q In 1971.

9 THE COURT: If you know.

10 A I don't recall. I would believe, yes, he was,
11 but I am not sure.

12 Q Now, from your experience as a probation
13 officer and as a supervisor, is it correct that the judge
14 takes into consideration, in imposing sentence, so far as
15 you know, many, many factors?

16 A That is correct.

17 Q And some involve including psychiatric examinations,
18 whenever they may have been held?

19 A Yes, sir.

20 Q The report that is rendered by the Probation
21 Department?

22 A Yes, sir.

23 Q The recommendations, if any, of the Probation
24 Department?

25 A Yes, sir.

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Barkley - cross

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Q Incidentally, were there any recommendations in this instance by the Probation Department?

A Yes.

Q And what was the recommendation?

A That the defendant be incarcerated.

Q And this was before the Court.

A This was during the time of the pre-sentence conference.

Q And the Court had this before it, did it not?

A It had what, sir?

Q It had that recommendation before it.

A That is correct, yes.

Q And sometimes the Courts accept the recommendation and sometimes they do not, isn't that correct?

A That is correct.

Q Does the Court also include such factors as to when the last time the man had committed a crime or some other offense?

A Yes, I would say so.

Q Do you know when this man had last committed any crime or offense prior to 1971?

A I don't remember the year, no.

Q Well, if I showed you the file, would that help?

A Yes.

(Mr. Platzman hands to the witness)

A Thank you.

MR. JOSSEN: Your Honor, I assume the question is with respect to matters which Mr. Barkley would know.

THE COURT: Well, if Mr. Barkley knows about it, fine. If it is in the file he can actually read it.

Why don't you tell us if that refreshes your recollection. If it does not, you can just read it and tell the jury that you are reading from the report.

A (Examining) Yes, it does refresh my memory, yes.

Q When was the last time?

A It was in '57.

Q And that was fourteen years before this incident, is that right?

A That is correct.

Q Now, was this same file and report also before Judge Isseks when he was resentenced on March 26th?

MR. JOSSEN: Objection, your Honor.

THE COURT: Overruled.

A I would have no knowledge of that whether it was or it wasn't.

Q Were you present on the March 26 sentencing?

A The second sentencing?

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Barkley - cross

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Q Yes.

A I don't recall whether I was or not.

Q Could you tell from the file whether you were present?

A No, there would be no indication in the file as to who was present.

Q Was Mr. Howard present also on the first occasion?

A Yes.

Q Did there come a time when this defendant, Monell, violated probation?

A Yes, sir.

Q And when was that?

A In 1972.

Q And can you tell us the circumstances?

A Yes. Mr. Monell was sentenced to probation five years by Judge Isseks. He --

THE COURT: That was on March 26, 1971?

THE WITNESS: Yes, that is correct, sir.

A -- and we transferred his supervision to Ulster County where he resided, and he absconded from the jurisdiction of the Ulster County Probation Department, and we were led to believe that he went to the Virgin Islands.

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Q And he had lived in the Virgin Islands.

A Yes.

Q How long did he stay in the Virgin Islands?

A I have no knowledge of how long he stayed there.

Q Did he come back to the United States at any time after leaving the Virgin Islands?

A Yes, he did.

Q When?

A This year.

Q How about before this year?

A I have no knowledge of that.

Q Would your file or the probation file indicate in any way whether he returned to the United States and in this area in 1974?

A I don't believe so. I will take a look through it.

(After examining)

A No, it does not indicate that, but I do believe that he did return, yes.

Q In 1974.

A Yes.

Q And after he returned did the Probation Department take any steps with respect to Mr. Monell of any nature whatsoever?

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Barkley - cross

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A We had a warrant outstanding for his arrest.

Q Was he arrested when he returned in 1974?

A No, he surrendered himself voluntarily.

Q To whom?

A To the New York State Police.

Q And then what happened?

A And he was remanded to the Orange County jail
and we proceeded to go ahead with the violation of
probation.

Q And what was done?

A There was a hearing to set bail, and then there
was a hearing on the merits of the case, and that presently
is pending.

Q Since 1974.

A No, this year.

Q But it has been pending since '74, is that right?

A Yes, that is correct.

Q No determination?

A Not as yet.

THE COURT: Let us clarify that. When was the
hearing held relevant to whether or not he would be
adjudicated in violation of probation?

THE WITNESS: Your Honor, it was in October of
this year of '75.

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Barkley - cross

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THE COURT: There has been no decision to date,
is that correct?

THE WITNESS: That is correct. It is still
pending.

Q Do you know how long he stayed in the United
States when he came back in September, when he was here in
1974?

A No, I do not know.

Q Do you know whether he ever went back to the
Virgin Islands since 1974?

A No, I do not know that.

Q Were any hearings held, so far as you know, in
September of 1974?

A Sir, with regard to what?

Q With respect to his alleged violation of
probation.

THE COURT: That is, any type of hearing?

THE WITNESS: Not that I am aware of.

MR. PLATZMAN: No other questions.

MR. JOSSEN: I have just a few questions, your
Honor.

REDIRECT EXAMINATION

BY MR. JOSSEN:

Q Mr. Barkley, you were asked on cross-examination

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2 about some of the factors which a judge takes into
3 consideration when he sentences a person.

4 Do you know, sir, whether a judge would take
5 into consideration the factor that a defendant had pleaded
6 guilty but subsequently had claimed to another person,
7 a probation officer, that he was not guilty?

8 A I think he would take that into consideration,
9 yes.

10 Q Now, sir, you were asked a question about
11 Mr. Monell returned to the United States. Do you recall
12 when he did return -- what year?

13 A I believe it was in 1974.

14 Q 1974?

15 A I believe so, yes.

16 Q Does it refresh your recollection if I say to
17 you 1975?

18 A I am really not sure. I couldn't say
19 categorically.

20 MR. JOSSEN: Your Honor, I would like to read
21 a few excerpts from the report, Exhibit 3-A in evidence.

22 "Subject was paroled from Auburn Prison on
23 December 3, 1959. He was cited for violation of Probation
24 on February 20, 1960, in that he remained away from home
25 all night on several occasions, in that he indulged in

excess of alcoholic beverages, and in that he was mistreating a girlfriend. He was returned from parole to Greenhaven Prison on March 3, 1960. He was finally released from prison on November 23, 1962.

"Subject was arrested in Orange County on a charge of Robbery, 1st Degree on February 2, 1966. This charge was dismissed on February 11, 1966 after examination.

"Subject is also known to the Orange County Probation Department in addition to the above for non-support of his wife and children, dating from March 1968."

I have no further questions of the witness.

MR. PLATZMAN: No further questions.

THE COURT: Thank you very much.

(Witness excused)

MR. JOSSEN: The government calls Thomas Casey.

T H O M A S C A S E Y, called as a witness by the government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOSSEN:

MR. JOSSEN: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Casey, please keep your voice up so that

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Casey - direct

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everyone in the courtroom can hear you.

How are you employed?

A I am a court reporter in County Court, Goshen,
New York.

Q How long have you been a court reporter there?

A Seven years.

Q Are you assigned to any particular court or a
particular part in Goshen?

A Yes, I am.

Q Will you tell us what part or what court.

THE COURT: Will you go back to the particular
point in time.

Q At any time during the period of time that you
have been a court reporter, have you been assigned to a
particular part?

A Yes, sir.

Q And have you been assigned to the same part
throughout?

A Yes, sir.

Q All right, would you tell us what part, what
court that is?

A The criminal court.

Q Is there a particular part?

A Part I.

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Casey - direct

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Q Are you assigned to a particular judge?

A Yes, sir.

Q In 1971 were you assigned to a particular judge?

A Yes, sir.

Q What is the name of that judge?

A Judge Abraham Isseks.

Q How long have you been assigned to Judge Isseks as a court reporter?

A For seven years.

Q Would you tell us what the duties of a court reporter are?

A To record conversation in court verbatimly, and then upon request to make transcripts of what took place.

2 Q Mr. Casey, how do you record the substance of
3 proceedings which occur in court?

4 A On the stenotype machine.

5 THE COURT: Is that a machine similar to those
6 used by the court reporters who are before you today?

7 THE WITNESS: Yes, sir, they are.

8 Q Is there a particular system you use on the
9 machine such as this one used here today?

10 A Yes, sir.

11 Q Would you describe it?

12 A It is known as the Berry Horne theory.

13 Q Would you elaborate on that?

14 MR. PLATZMAN: I think we are getting a little
15 far afield.

16 THE COURT: If there comes a question on the
17 accuracy of taking down the proceedings or the accuracy
18 of the transcription that I am sure you intend to intro-
19 duce, we can deal with it, but I think we can move along.

20 Q Mr. Casey, I direct your attention to March 5,
21 1971.

22 Did you have occasion on that day to record any
23 official court proceedings in connection with the case of
24 People v. Richard Monell?

25 A Yes, sir.

1 2 gwmch Casey-direct

2 Q Tell us how you reported it.

3 A On the stenotype machine.

4 Q Is it your practice to record as well the presence
5 of those in the courtroom that day?

6 A Yes, sir.

7 Q Thereafter, did you have an opportunity to trans-
8 cribe your notes?

9 A I did.

10 Q Mr. Casey, I place before you Government's
11 Exhibit 4 for identification.

12 Can you identify it, sir?

13 A Yes, sir.

14 Q How can you identify it?

15 A My name is on the title page and there should be
16 a certification here, but there isn't.

17 THE COURT: A certification on the last page?

18 THE WITNESS: Yes, sir. I can explain this.

19 Q We may be able to clear it up this way:

20 I am placing before you Government's Exhibit 5
21 for identification and Government's Exhibit 5-A for
22 identification.

23 Would you look at Government's Exhibit 5 for
24 identification?

25 A Yes, sir.

1 3 gwmch Casey-direct

2 Q Can you identify that, sir?

3 A Yes, sir.

4 Q And how can you identify it?

5 A My name appears on the title page and on page

6 17 I have certified that it is a true and accurate

7 copy.

8 Q Mr. Casey, do you know whether at one time

9 Government's Exhibits 4 and 5 were together?

10 A Yes, sir, they were.

11 Q Can you tell us what Government's Exhibit 4-A

12 for identification is?

13 A Exhibit 4-A for identification are the original

14 minutes that I took on the stenotype machine.

15 Q How can you identify that, sir?

16 THE COURT: On what date?

17 THE WITNESS: On March 5, 1971.

18 Q How can you identify it, sir?

19 A This is my handwriting on the tape here, with the

20 name of the defendant, the indictment number, and the

21 date, and I wrote in here the word "sentencing."

22 Also, I initialed it.

23 Q Mr. Casey, have you had an opportunity to compare

24 Government's Exhibit 4 with Government's Exhibit 4-A?

25 A Yes, sir.

1 4 gwmch

Casey-direct

2 Q Is Government's Exhibit 4 a true and accurate
3 transcription of the proceedings on March 5, 1971 before
4 Judge Issek as recorded by you in the case of the People
5 v. Richard Monell?

6 A Yes, sir.

7 MR. JOSEEN: I offer Gogernment's Exhibit 4 in
8 evidence.

9 MR. PLATZMAN: No objection.

10 THE COURT: Received.

11 (Government's Exhibit No. 4 was received in
12 evidence.)

13 Q Mr. Casey, have you had an opportunity to compare
14 Government' Exhibit 5 for identification with Government's
15 Exhibit 5-A for identification?

16 A Yes, sir.

17 Q Is Government's Exhibit 5 a true and accurate
18 transcription of the notes of the proceedings before
19 Judge Issek on March 26, 1971, as recorded by you in the
20 case of the People v. Richard Monell?

21 A Yes, sir.

22 MR. JOSSEN: I offer Government's Exhibit 5
23 in evidence.

24 MR. PLATZMAN: No objection.

25 THE COURT: Received.

1 5 gwmch

Casey-direct

2 (Government's Exhibit No. 5 was received in
3 evidence.)

4 Q Mr. Casey, in the normal course of court pro-
5 ceedings in the Orange County Court to which you were
6 assigned, did you keep anyother records?

7 A The calendars for that day, for the specific
8 date.

9 Q How did you receive these calendars?

10 A I received these calendars through the court
11 clerk.

12 Q What was on the calendar when you received them,
13 generally?

14 A There would appear the date, who the judge was,
15 the indictment number, the name of a defendant, what the
16 charge is, whether he is in jail or he is on bail, and who
17 defense counsel is that is appearing for the defendant.

18 Q What, if anything, did you do with the calendars
19 when you received them from the clerk?

20 A I make notations on those calendars and I keep
21 them.

22 Q Mr. Casey, I am placing before you Government's
23 Exhibit 6 for identification.

24 Can you identify that?

25 A Yes, sir.

1 6 gwmch Casey-direct

2 Q How can you identify it?

3 A Because it is my handwriting and my printing
4 that appear on these calendars.

5 Q Would you tell us the date that appears at the
6 top of the calendar?

7 A March 5, 1971.

8 Q Mr. Casey, there is some pencil handwriting,
9 what appears to be pencil handwriting, which appears on
10 Government's Exhibit 6 for identification.

11 Do you recognize that handwriting?

12 A Yes, sir. That is my handwriting.

13 MR. JOSSEN: I offer it in evidence.

14 MR. PLATZMAN: No objection.

15 THE COURT: Received.

16 (Government's Exhibit No. 6 was received in
17 evidence.)

18 Q Mr. Casey, I am placing before you Government's
19 Exhibits 7, 8 and 9 for identification.

20 Would you examine those exhibits and tell us
21 whether you can identify them?

22 A Yes, sir. These are the original calendars.

23 Q Original calendars which you received, is that
24 correct?

25 A Yes, sir, for March 15th, March 11th and

1 7 gwmch

Casey-direct

2 March 26, 1971.

3 Q Now, there is handwriting on each of these
4 exhibits. Do you recognize the handwriting?

5 A Yes, sir. That is my handwriting.

6 Q It is your handwriting on each exhibit?

7 A Yes, sir.

8 MR. JOSSEN: I offer them in evidence as
9 Government's Exhibits 7, 8 and 9.

10 THE COURT: What are the dates?

11 MR. JOSSEN: March 11th, March 15th and March 26,
12 1971.

13 MR. PLATZMAN: I don't see the relevancy of the
14 March 15th calendar. I don't see his name on the calendar.

15 MR. JOSSEN: We will get to it in a moment.
16 If there is an objection to it, I would be glad to clear it
17 up.

18 THE COURT: Get to it in a moment?

19 MR. JOSSEN: With the next question.

20 MR. PLATZMAN: I have no objection to these
21 calendars.

22 THE COURT: I will let them all go in and
23 subject to connection as to No. 8.

24 MR. PLATZMAN: 9 is the only one I don't see his
25 name on.

1 8 gwmch

Casey-direct

2 THE COURT: That is the March 15th one?

3 MR. PLATZMAN: Yes.

4 THE COURT: Let me see if I have this straight.
5 March 11th is what?

6 MR. JOSSEN: Government's Exhibit 8.

7 THE COURT: March 15th?

8 MR. JOSSEN: Government's Exhibit 9.

9 THE COURT: And March 26th is 7?

10 MR. JOSSEN: That's correct.

11 THE COURT: There is no objection as to Govern-
12 ment's Exhibits 7 and 8; is that correct?

13 MR. PLATZMAN: Yes, your Honor.

14 THE COURT: There is an objection as to relevance
15 on Government's Exhibit 9. So instead of my accepting
16 it subject to connection, we will hold it for that one
17 question you wanted to ask.

18 MR. JOSSEN: It may be more than one.

19 THE COURT: Whatever it is.

20 (Government's Exhibits Nos. 7 and 8 were received
21 in evidence.)

22 Q Mr. Casey, other than the two dates on which
23 you transcribed proceedings in connection with Mr. Monell's
24 sentencing, do you recall seeing Mr. Monell in March of
25 1971 at any time?

1 9 gwmch

Casey-direct

2 A Yes, sir.

3 Q Where did you see him?

4 A In the holding cell just beyond the judge's bench.

5 Q Do you recall the date that you saw him there?

6 A No, sir, I do not.

7 Q Mr. Casey, is the holding cell a place where
8 prisoners of the county court are are normally kept?

9 A Yes, sir.

10 Q Is that when they are to appear in connection
11 with a court proceeding?

12 A Yes, sir.

13 Q So that if the prisoner was not to appear in
14 court that day, would he be in the holding cell?

15 A No, sir.

16 Q On these two occasions when you recall seeing
17 Mr. Monell in the holding cell, do you recall whether Mr.
18 Monell was brought into court?

19 A No, sir, he was not brought into court on the
20 occasions that I saw him, other than the 5th and the 26th.

21 Q Do you recall whether Mr. Monell's case was
22 placed on the calendar on any day other than March 5th and
23 March 26, 1971?

24 A No, sir, I don't believe so.

25 Q Mr. Casey, I show you Government's Exhibit 8 in

1 10 gwmch Casey-direct
2 evidence.

3 Does that refresh your recollection as to whether
4 Mr. Monell's case was placed on the calendar on any day
5 other than March 5th and March 26, 1971?

6 A Yes, sir, it does.

7 Q Was Mr. Monell's case placed on the calendar?

8 A Yes, sir.

9 Q What date appears there?

10 A March 11, 1971.

11 Q Now, Mr. Casey, is there any notation next to
12 Mr. Monell's case on March 11, 1971, Government's Exhibit 8?

13 A Yes, sir, there is.

14 Q Would you read that to the jury, please?

15 A I have here in my handwriting, "Sentencing
16 adjourned to 3/15/71."

17 Q Mr. Casey, how did you learn that information?

18 A It had undoubtedly come from the judge.

19 MR. PLATZMAN: I am going to object to that
20 unless it is based on knowledge.

21 THE COURT: He said "undoubtedly," but let's
22 inquire further.

23 Do you know whether or not it came from the
24 judge?

25 THE WITNESS: Yes, sir.

1 11 gwmch

Casey-direct

2 THE COURT: Did it?

3 THE WITNESS: Yes, sir.

4 Q Mr. Casey, have you had occasion to review any
5 other calendar for March of 1971 other than the ones
6 which have been placed into evidence?

7 A Yes, sir, I have.

8 Q Did you find a reference to the case of People v.
9 Richard Monell on any of those calendars?

10 A No.

11 I went through the entire calendars and the
12 entire minutes for the month of March of 1971, and those
13 are the only dates that this defendant is mentioned on any
14 of those calendars.

15 Q Have you had occasion to review any of your
16 other notes of proceedings, other than the ones which have
17 been marked for identification for the month of March 1971?

18 A Yes, sir. At the same time I went through the
19 minutes, the original minutes, for each day to make sure that
20 his name did not appear in those minutes or there were any
21 proceedings in those minutes for this defendant.

22 Q Did you find a reference to any proceeding
23 involving Mr. Monell?

24 A No, except on these dates here.

25 Q Mr. Casey, do you know Mr. Doulin?

1 12 gwmch Casey-direct

2 A Yes, sir, I do.

3 Q Do you see him in court today?

4 A Yes, sir, I do.

5 Q Point him out to us, please.

6 A The gentleman sitting right there to the right
7 of Mr. Platzman.

8 MR. JOSSEN: May the record reflect the
9 defendant has been identified by the witness.

10 THE COURT: Yes, he has.

11 Q Is your job as a court reporter an appointed job
12 or is it a competitive job?

13 A It is a competitive job. At that time when I
14 secured the position, there was no existing list. There-
15 fore, it became appointive.

16 Q By whom were you appointed?

17 A I was appointed by Judge Isseks.

18 Q What year was that?

19 A That was in the end of 1968 to take effect
20 January of 1969.

21 Q Did you initially seek an interview directly
22 with Judge Isseks for this job?

23 A I sought an interview, not directly with Judge
24 Isseks.

25 Q How did you seek an interview with Judge Isseks?

1 13 gwmch

Casey-direct

2 MR. PLATZMAN: I will object to this along the
3 same line. I think we are far afield.

4 THE COURT: Overruled.

5 A I went to see Bill Doulin.

6 Q What did you say to Mr. Doulin and what did he
7 say to you?

8 MR. PLATZMAN: I object, if your Honor please.

9 THE COURT: I really think it is a little afield.
10 I let you ask that one question.

11 This was in 1968?

12 MR. JOSSEN: That's correct.

13 THE COURT: He went to see Mr. Doulin prior to
14 seeing Judge Isseks. I think that is sufficient.

15 MR. JOSSEN: Your Honor, may we approach the bench?

16 THE COURT: Yes.

17 (Continued on next page)

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2 (At the side bar)

3 THE COURT: I cannot see the relevance of this.
4 I really do not see it.

5 You want to establish that Mr. Doulin, I suppose,
6 is the man to whom everyone looked before they can go
7 anywhere in Orange County, but I have great difficulty
8 with this, and I would like to hear you.

9 MR. JOSSEN: Your Honor, I would also like to
10 make an offer of proof. The offer of proof is as follows:

11 Mr. Casey will testify that he spoke to
12 Mr. Doulin and told him that he understood that there would
13 be a position available with a new judge -- Judge Isseks
14 was being appointed and he was wondering whether Mr. Doulin
15 could speak to Judge Isseks in connection with his
16 application.

17 A couple of days later Mr. Casey saw Judge
18 Isseks on the street, called over to him and said, "Did
19 Mr. Doulin speak to you about me?" And Judge Isseks said,
20 "Yes, when can you start?"

21 THE COURT: How do you get that conversation in
22 evidence?

23 MR. JOSSEN: Well, your Honor, I would simply
24 add in at this point the conversation with Mr. Doulin and
25 the fact that shortly thereafter Mr. Casey had an interview

1 with Mr. Isseks. I would also offer that following this
2 interview and following his appointment, Mr. Casey, who had
3 never before made a contribution to any political party,
4 made a \$50 contribution to the Republican party.
5

6 THE COURT: That I will keep out.

7 MR. JOSSEN: Your Honor, the relevance of all
8 this we submit is that one of the backgrounds of this case,
9 as your Honor knows, is to establish the power and position
10 of Mr. Doulin, the proximity of Mr. Doulin to the court,
11 to the county offices, and this evidence is probative on
12 that issue.

13 MR. PLATZMAN: This would be an almost impossible
14 thing to refute, in the sense of an attempt to show that
15 there are probably thousands of instances when he is totally
16 ineffective with anybody, or the totally effective
17 capabilities of other people. We are getting to a point,
18 your Honor, where I do not think political affiliations
19 and the building up of it -- of a record which here and
20 there this man has helped somebody, which is a normal course
21 of proceeding in recommendations, whether it be in the
22 business world or the political world or civil service or
23 whatever, it would have the tendency to prejudice this
24 jury because of the fact that in these specific instances
25 which are brought to the attention of the jury this man

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Casey - direct

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exerted some influence.

THE COURT: I am going to allow you to put in the conversation with Mr. Doulin. I am going to exclude any conversation with Mr. Isseks outside of Mr. Doulin's presence, and I am going to exclude any contribution to the Republican party.

MR. JOSSEN: Fine. One further point: I just wish to ask one further thing of Mr. Casey, and then before I turn Mr. Casey over to Mr. Platzman I would like to read to the jury the transcripts of the two sentencing proceedings.

THE COURT: You may.

MR. PLATZMAN: Of course I am going to object to the introduction of any part of this testimony.

THE COURT: Yes. I thought you had, but at this point you renew your objection to that part of my ruling which permits a conversation with Mr. Doulin to go in.

MR. JOSSEN: Would your Honor allow me to introduce to the jury the proceedings, the transcript that I am reading to them, or would your Honor want to make some preliminary comment?

THE COURT: No.

MR. PLATZMAN: I did not get that.

THE COURT: He said he wants to read the two

transcripts of the sentencing.

Just describe what you are reading, "I am reading Government's Exhibit," whatever the number is, "which is the transcript of the sentence on March 5" -- and then the other one, the transcript on the resentence of March 26 -- just do it in that fashion.

MR. JOSSEN: Fine. Thank you.

(In open court)

BY MR. JOSSEN:

Q Mr. Casey, would you tell us the substance of your conversation with Mr. Doulin, what you said to him and what he said to you.

A The position for the judgeship in County Court was effective in January 1969.

I was working in the District Attorney's Office of Orange County at that time. Through the newspapers I knew the position was coming through, therefore I went to Mr. Doulin and I asked him to intercede for me, to make an appointment, if it was possible, with the elected Judge Isseks, to see if I could secure the position.

He said that he wouldn't promise my any results but that he would see Judge Isseks --

Q Are you finished with the substance of the conversation?

1 mkas
2 A About a week later --

3 Q No, Mr. Casey, are you finished with the
4 substance of the conversation?

5 A Yes, I am. That was the entire conversation.

6 MR. JOSSEN: Your Honor, at this time I would
7 like to read to the jury Government's Exhibit 4, which is
8 a transcript of the minutes of March 5, 1971.

9 "The People of the State of New York against
10 Richard Monell, Defendant.

11 "The Clerk: Indictment No. 88-68, the People
12 of the State of New York against Richard Monell, defendant.

13 "Mr. Cohen: Your Honor, under Indictment
14 No. 88-68, the People present Richard Monell for sentence.
15 The defendant is present with his attorney, Mr. Shapiro
16 of Legal Aid.

17 "This defendant is presented for sentence this
18 morning upon his plea before Judge O'Gorman for Attempted
19 Assault in the Second Degree under the Old Penal Law. He
20 is present at this time for sentence.

21 "The Court: Are you Richard Monell?

22 "The Defendant: Yes.

23 "The Court: You are here with your attorney,
24 Mr. Shapiro, this morning for sentencing. Do you have any
25 legal cause why sentence should not be pronounced at this

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time?

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"The Defendant: No.

"The Court: Mr. District Attorney, do you wish
to be heard?

"Mr. Cohen: No, your Honor.

"The Court: Mr. Shapiro.

"Mr. Shapiro: I am not going to add very much
to what you have before you in the Probation Report. It is
full and fair and complete. I have to say these things on
Mr. Monell's behalf. Mr. Monell surrendered himself to the
police when he heard that he was sought.

"In addition to this, he is, generally
speaking -- I don't leave out the fact that he was in
difficulty with the law before, but since then -- that is
more than twelve years, more than fourteen years ago -- he
has been working regularly and supports himself and his
family as best he can. In 1954 and 1957 he was in the
United States Marines and served honorably. This case arose
all the way back from 1968, almost three years ago. During
that period of time since this matter arose, April 21, 1968,
until today, March 5th, 1971, he has stayed out of trouble
and behaved decently and honorably. I suggest to the Court,
if given the opportunity, he will continue to do so and be
a good citizen.

"We are ready for sentence, your Honor.

"The Court: No one knows better than this defendant. He has been in and out of jail and knows jail very well. He has been given a great opportunity here. He used a gun. He is lucky that he did not kill the person. If he did, he would be standing here for Murder. People are trying to help him. Under the old law the Court was limited. The Court can't find any other means or method, or any other reason for not sending this man to jail.

"The judgment and sentence of this Court is that you are hereby sentenced to the custody of the Department of Correction at the State Prison known as Sing Sing, at Ossining, New York, for an indefinite period, the maximum term which shall not exceed two and a half years.

"The Clerk: You have a right to appeal to the Appellate Division, Second Department, within thirty days, and, in addition, upon proof of your financial inability to retain counsel and to pay the cost and expenses of the appeal, you have the right to apply to the Appellate Division, Second Department, for the assignment of counsel and for leave to prosecute the appeal as a poor person and to dispense with printing.

"The Appellate Division, Second Department,

is located at 45 Monroe Place, Brooklyn, New York 11201."

At this time, your Honor, I would like to read to the jury Government's Exhibit 5 in evidence, which are the sentencing minutes of March 26, 1971, the case of the People of the State of New York against Richard Monell.

"The Clerk: Indictment No. 88-68, the People of the State of New York against Richard Monell.

"Mr. Weissman: Your Honor, under Indictment No. 88-68, the People present the defendant Richard Monell who is present in the courtroom with his attorney, Mr. Norman Shapiro. Heretofore on the 5th day of March, 1971, the defendant appeared before this Court and was sentenced to the Department of Correctional Services at Ossining, New York, the sentence being from zero to two and a half years. It was subsequently determined that this sentence was --

"The Court: It was a flat two and a half years. I can help you. The application was made to the Court and told to the Court that it was under the old law that we were sentencing him. The District Attorney had the file. I think that is why he is back.

"Mr. Weissman: Yes, I was going to state that. It was then determined to be an illegal sentence, and as your Honor has explained to me that it was under the old

1 law and not under the new law, in view thereof we present
2 the defendant here today for the purpose of re-sentencing.

3 "Mr. Shapiro: I know that your Honor has a
4 Probation Report that is full and fair and was carefully
5 considered by the Court on the previous sentencing date.
6 I would like to bring certain things to the Court's
7 attention. I don't minimize the fact --

8 "The Court: Let me say this:

9 "He is here for re-sentencing. We have to move
10 that application. You are making an application now?

11 "Mr. Shapiro: Yes, I move to set aside the
12 sentence previously imposed upon him as inappropriate under
13 the present law and ask the defendant be re-sentenced.

14 "Mr. Weissman: The District Attorney consents
15 to tha-.

16 "The Court: Motion granted.

17 "Now, the Court asks the defendant, do you have
18 any legal cause to show why sentence should not now be
19 pronounced upon you?

20 "The Defendant: May I talk to my attorney?

21 "The Court: Yes.

22 (Short pause.)

23 "The Defendant: No, sir.

24 "The Court: Mr. Shapiro, do you wish to be
25

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2 heard?

3 "MR. SHAPIRO: If Your Honor please, as I
4 said, I know that your Honor carefully considered
5 the Probation Report, which was full and fair on the
6 last sentence occasion. I bring to Your Honor's
7 attention several things. Under the law it may be that
8 you would have had to place a harsher sentence

9 (From hereon page 10 from Government's Exhibit
10 5 missing; please fill in.)
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1 of them, and separated by eleven years. He has worked
2 and bears a reasonably good reputation in the City of
3 Newburgh and, also, in the area of New Paltz where his
4 failly resides.
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6 "I ask that he not be returned to Sing Sing.
7 The past couple of weeks that he spent awaiting this
8 sentence was certainly a sufficient deterrent to him.
9 He certainly learned his lesson. It would be almost cruel
10 and unusual punishment to send him away. I am asking the
11 Court's mercy.

12 "THE COURT: Mr. District Attorney.

13 "MR. WEISSMAN: Your Honor, the District
14 Attorney's Office, since the prior sentence was imposed,
15 has received a number of calls from responsible citizens
16 from the County of Orange asking that leniency be extended
17 to this defendant. As Mr. Shapiro has stated, since
18 1968, which is a period of three years, this defendant has
19 kept himself clean and has not been in any problem of any
20 kind.

21 "Now, while the Probation Report does
22 indicate that in the past the defendant has had some
23 problems, the report, also, indicates that all of these
24 problems occurred some ten years ago, or as Mr. Shapiro
25 stated, almost fourteen years ago.

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2 "So, to take into account, at this time, a
3 record that goes back some fourteen years and to face
4 judgment upon that record, when this defendant was an
5 extremely young man, I must agree with Mr. Shapiro, it would
6 be an injustice because he has kept himself clean with the
7 except of this one occurrence, and three years has gone
8 by since that one.

9 "Now, Your Honor, under the circumstances, if
10 this defendant has been able to keep himself clean since
11 1968, and if he were to be placed on Probation, and if
12 he didn't realize the seriousness of this and the break
13 that he would be getting, if he gets into trouble he is
14 going to be back here before this Court and then he is going
15 to receive some very severe and very harsh punishment.
16 I think, under the circumstances, if he has any further
17 trouble, he has no one else to blame except himself.
18 I feel, under the circumstances, perhaps this defendant
19 should be given another opportunity, and if placed on
20 Probation he would be his own judge and jury. It rests
21 entirely upon him as to whether or not he will have to go
22 to prison again.

23 "MR. SHAPIRO: Thank you.

24 "THE COURT: You must have someone in heaven
25 looking down on you. The District Attorney said your

1 case came under the old law. Now because of them you are
2 back here again.

3 "I admire you. I think that any time you,
4 as a District Attorney, or any other man in the District
5 Attorney's Office feels that an individual has been
6 rehabilitated, or should be allowed out on the street
7 again, he is that type of a person, he deserves it, and the
8 circumstances require it, I think you should get up and
9 tell me. I think that makes a good District Attorney,
10 makes a good person anyway, and it puts the judge on the
11 spot, I will tell you that. You make me think here.
12 Mr. Shapiro did a good job for him. Maybe it was supposed
13 to be.

14 "Maybe you are not supposed to go to jail.
15 Maybe you earned your right to be out. I know I sentenced
16 you the last time.

17 "Maybe if you were here in court he wouldn't
18 have been sentenced, I don't know, that particular time.

19 I think, under the circumstances, far be it for
20 me to play God. I am trying to do what Solomon did I
21 suppose.

22 "Richard Monell, only you know the opportunity
23 that you are getting. You come back because of an
24 irregularity on sentencing. The District Attorney's
25

Office realized this. Now, they may be making a mistake and myself. The only one that this falls on is yourself; is that right?

"THE DEFENDANT: Yes.

"THE COURT: Are you a drinker?

"THE DEFENDANT: Yes.

"THE COURT: Are you a heavy drinker?

"THE DEFENDANT: No, sir.

"THE COURT: Maybe it's against my better judgment. Maybe the ends of justice has been met. Maybe you have been rehabilitated. If you can stay away from trouble for fourteen years, I saw that in the report, but nobody was going to bat for him. You look like a person that should not be put away. For three years you have been out of trouble. Don't you let me down because if you do, you are going to take the longest ride I can give you.

"The sentence of this Court is that you are placed on Probation for a period of five years and that you will report to the Probation Department and answer all the questions that they ask you and that are reasonable, and all the demands that they give you are reasonable. If you get in trouble for anything, you are going away.

"Do you understand that?

1 "THE DEFENDANT: Yes.

2 "THE COURT: Are you a Catholic?

3 "THE DEFENDANT: Yes, sir.

4 "THE COURT: Go to church tonight and do some
5 praying. Maybe that's what you can use.

6 "THE CLERK: You have a right to appeal to the
7 Appellate Division, Second Department, within thirty days,
8 and, in addition, upon proof of your financial liability
9 to retain counsel and to pay the cost and expenses of the
10 appeal, you have the right to apply to the Appellate
11 Division, Second Department, for the assignment of counsel
12 and for leave to prosecute the appeal as a poor person
13 and to dispense with printing.

14 "The Appellate Division, Second Department,
15 is located at 45 Monroe Place, Brooklyn, New York 11201."

16 No further questions at this time.

17 THE COURT: You may examine, Mr. Platzman.

18 CROSS EXAMINATION

19 BY MR. PLATZMAN:

20 Q When you went to see Mr. Doulin, you say at
21 the time that you found out that there was going to be a
22 vacancy in the service of Judge Isseks, you asked him
23 to see what he could do to recommend, is that correct?

24 A Yes, sir.

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Q And what did he tell you?

A He told me that he couldn't promise me anything and that I should come back in a week or two, which I did. When I did return Bill Doulin said for me to go see Judge Isseks. I did go --

Q Then you went to see Judge Isseks?

A Well I met him, put it that way.

Q Yes.

A I met with Judge Isseks on the street.

Q Did you have any contact with Mr. Doulin at that point?

A I am sorry?

Q Did you speak with Mr. Doulin once again at that point?

A Yes. Mr. Doulin told me to go see Judge Isseks.

Q And that is what you asked Mr. Doulin to do for you, is that right?

A Yes.

Q When you asked him that did Mr. Doulin say to you that he would like to have some money?

A No, never.

Q Did he tell you if you got the job you would have to pay some money?

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A No, sir.

Q Did you ever offer to give Mr. Doulin money if he got you the job?

A No, sir.

Q Was there ever any suggestion at any time in any way, directly or indirectly, about your paying any money for the job?

A Absolutely not.

Q Now prior to that you were working in the District Attorney's office, is that right?

A Yes, sir.

Q And how long had you been working there?

A About ten months.

Q , Was that also an appointive job?

A Yes, sir.

Q And whom had you discussed that before you got your appointment?

A No one.

Q You went there yourself.

A No, sir, I was sent for.

Q You did not go to Mr. Doulin to ask for that job, did you?

A No, sir.

Q Now going back to this calendar situation, did

mks

Casey - cross

1 you make up the calendar for March 5th?

2 A No, sir.

3 Q You were just the reporter.

4 A Yes, sir.

5 Q You made notations on the calendar, which is
6 made up by somebody else?

7 A Yes, sir.

8 Q But after March 5th did this case appear on
9 the calendar?

10 A I think it was March 11 that the case itself
11 appeared on the calendar.

12 Q For sentencing?

13 A Yes, sir.

14 (Continued on next page.)
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Casey-cross

2 Q And was it postponed?

3 A Yes, sir.

4 Q Do you recall who was present at the time?

5 A Not without looking at the calendar.

6 Q Would you, please?

7 THE COURT: That would be Exhibit 8 in evidence.

8 THE WITNESS: Yes. I have it right here.

9 THE COURT: Look at it and if that refreshes
10 your recollection, would you tell us.

11 THE COURT: Yes, sir.

12 A David Ritter was the assistant district attorney,
13 and Norman Shapiro, the chief counsel of Legal Aid, were
14 the attorneys.

15 Q And the case was adjourned?

16 A Yes.

17 Q Did you make a notation of that?

18 A Yes, sir.

19 Q After you make the notation on the calendar,
20 what happens to the calendar?

21 A Any calendars that I receive I retain. They are
22 mine. They are copies that are made up that are given to
23 me, and I retain those calendars.

24 Q What other copy of the calendar is there at the
25 time?

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Casey-cross

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A The judge would have a copy, the court clerk presiding at the trial would have a copy, the district attorney would have a copy, and defense counsel would have a copy.

Q Who was the court clerk at the time?

A Richard Mendres.

Q Does Richard Mendres keep a record of the adjournment and the disposition of the calendar?

MR. JOSSEN: Objection.

THE COURT: If you know.

A I believe he does. I really couldn't say.

Q Can you tell us how the calendar is made up after the end of the calendar call for the next day?

A The calendar is made up by the district attorney's office.

Q And after it's made up by the district attorney's office, what happens to it?

A It is given to the court clerk.

Q So that the calendar itself and the cases that appear on it is determined by the district attorney's office?

A Yes, sir.

Q And --

THE COURT: Except if a case is adjourned from

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Casey-cross

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one day to another, that has been done by order of the Court; is that correct?

THE WITNESS: That is correct, your Honor.

Q The district attorney then makes a record of it and he makes up a new calendar for the new day; is that the way it is done?

A Yes, I assume he makes a record of it. I don't know.

THE COURT: So you have two types of cases; you have cases that are on for the first time and cases that are adjourned over from some other date?

THE WITNESS: Yes, sir.

Q Would it be the district attorney who is in court at the time that would take the calendar back with him with his notations?

A Yes, sir.

Q And on that would appear, presumably, the disposition of the cases and the new dates; is that right?

MR. JOSSEN: Objection, your Honor.

THE COURT: If you know.

A Yes, sir, that is correct.

Q Now, has it happened in your experience as a court reporter that from time to time there have been some errors on a calendar?

1 4 gwmch

Casey-cross

2 A I don't know what you mean by "errors," sir.

3 Q Did cases not appear on a calendar when they
4 were supposed to or cases appeared on a calendar when
5 they shouldn't have?

6 A Yes, sir.

7 Q That happened from time to time?

8 A Yes, sir, that is correct.

9 Q And the district attorney who was present on the
10 March 11th hearing was Mr. Ritter; is that right?

11 A Yes, sir.

12 Q And he has just been elected district attorney
13 of Orange County; is that right?

14 MR. JOSSEN: Objection.

15 THE COURT: You are talking about relevance.
16 How relevant is that?

17 All right. Answer the question.

18 A Yes, sir.

19 Q Did you say on direct examination there were
20 one or two occasions when you saw Mr. Monell in the cell?

21 A Yes, sir.

22 Q Two occasions, was that?

23 A Three, I believe. At least three times.

24 Q Did I gather you said there were two occasions
25 when the case was not on the calendar that you saw him there?

5 gwmch

Casey-cross/redirect

A Yes, I would say that.

Q And do you remember what days that was?

A No, I do not.

Q Do you know how he got into the cell?

A Only a presumption.

THE COURT: You don't know?

THE WITNESS: I don't know, sir.

Q Did the district attorney's office indicate which prisoners are to be brought before the bar and thus placed in the cell before the calendar call?

A I honestly don't know.

Q If you know.

A I honestly don't know. I would assume so from the calendar because they make up the calendar.

MR. JOSSEN: I object to the answer and ask it be stricken.

THE COURT: Strike it.

MR. PLATZMAN: I have no other questions.

REDIRECT EXAMINATION

BY MR. JOSSEN:

Q Mr. Casey, is there any difference in the form of the calendars which are Government's Exhibits 7, 8 and 9 in evidence?

A Yes, sir, there is a difference.

6 gwmch

Casey-redirect

Q Would you tell us what the difference is?

A On Exhibit 8, this calendar is handwritten. Apparently there was supposed to be no work for the Court that day, and at the last minute these people came over, two of them came over, three of them came over, and this was handwritten. The handwriting in ink with the date at the top is Richard Mendres' handwriting. All other pencil notations are mine.

This was handed to me by the clerk and this is how it appears now.

Q What is the date on that, again?

A The date on this calendar is March 11, 1971.

MR. JOSSEN: No further questions.

MR. PLATZMAN: No questions.

THE COURT: Thank you very much, Mr. Casey. You are excused.

(Witness excused)

THE COURT: This would be a good time to take our afternoon recess. It is ten minutes of 3:00, ladies and gentlemen. We will take a ten-minute recess and then we will proceed until conclusion.

Please do not discuss the case among yourselves. Keep an open mind on all facets of the case until it has been concluded and has been given to you following my

1 7 gwmcn

2 charge.

3 The jury is excused for a ten-minute recess.

4 Counsel are excused.

5 (Recess)

6 (Continued on next page)

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Service of ONE COPY ~~2~~ copies of the
within APPENDIX is hereby
admitted this 29th day of
MARCH 1976

Signed _____

Attorney for APPELLEE

